

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitution Petition No. D- 499 of 2024

(Imran Ali Lodhi vs. Federation of Pakistan & others)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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Before;

Muhammad Saleem Jessar J;

Adnan-ul-Karim Memon, J;

Date of hearing and Order: 25.02.2024.

Mr. Abdul Mujeeb Shaikh, Advocate for Petitioner.

Mr. Muhammad Aslam Jatoi, Assistant Attorney General for Pakistan alongt with Sadam Hussian Inquiry Officer/SI FIA Crime & AHT Circle, Sukkur.

Adnan-ul-Karim Memon, J. The petitioner asserts he is a low-paid employee being unfairly harassed. He seeks the court's intervention to quash the FIA inquiry and prevent further harassment. He requests that the FIA be ordered to stop their investigation regarding respondent number 4's complaint until the petition is dealt with.

2. The petitioner, an employee of SEPCO, is involved in a complex situation stemming from a family-owned construction business, M/S TOA Builders (TGA Builders). His wife, mother-in-law, and sister-in-law registered the company in 2015, with the petitioner as a witness. A property, Tariq Arcade, was developed by TGA Builders under the supervision of Adeel Mustafa, a relative. The petitioner's minor son was appointed as an attorney, without his knowledge, which was later revoked upon discovery of fraud. Adeel Mustafa is alleged to have committed significant fraud, including issuing more files than authorized. The brother of Respondent No. 4, Ali Dino Gilal, is a purported buyer of a flat in Tariq Arcade. The petitioner claims he is being wrongly implicated in Adeel Mustafa's fraudulent activities. He filed a previous petition, which was disposed of with assurances from the state that he would not be harassed. Respondent No. 4 has filed a complaint with the Federal Investigation Agency (FIA) against the petitioner, leading to repeated summons and threats. Respondent No. 4 has also issued direct threats. The petitioner has filed a complaint to the DIGP Sukkur without a result. The petitioner and family members have also had a false FIR registered against them. The petitioner claims that respondent No. 4 has also

committed fraud related to the T & G Arcade project. The petitioner suffers from serious health issues requiring treatment abroad. He has repeatedly requested an official passport, but SEPCO has withheld it due to the pending FIA inquiry. He has in the past traveled on private passports for medical treatment and religious pilgrimage. The passport office has issued a memorandum for the granting of a passport, but SEPCO is withholding the no-objection certificate, leading to multiple problems for him.

3. The petitioner's legal representative asserted in court that Adeel Mustafa engaged in fraudulent activities, leading to a contested ownership and responsibility situation concerning Tariq Arcade. He emphasized the ongoing harassment and threats directed at the petitioner by Respondent No. 4, alongside the unjustified denial of the petitioner's official passport. Furthermore, the counsel highlighted the filing of baseless First Information Reports (FIRs) against the petitioner and his family. The counsel criticized the Inquiry Officer's (I.O.) handling of the complaint, alleging a lack of impartiality. Finally, the counsel clarified that the petitioner possesses inherited property from his father and has a history of international travel. He prayed for allowing the petition.

4. The Inquiry Officer, a Sub-Inspector from the FIA's Crime & AHT Circle in Sukkur, has submitted an inquiry report. Based on their findings, the petitioner is alleged to have committed offenses under sections 167, 420, 468, and 471 of the Pakistan Penal Code, as well as section 5(2) of the Prevention of Corruption Act II, 1947. The officer has recommended to register a formal case against the petitioner. He submitted that the FIA acknowledges receiving Adeel Mustafa's statement via courier on May 15, 2024, but asserts it falls outside their jurisdiction. The FIA argues that paragraphs 6 and 7 of the petition concern matters outside their investigative scope. The FIA presents evidence from the Director General of Immigration & Passport Sukkur and the Deputy Director/IBMS JIAP, Karachi, indicating the petitioner obtained a passport by falsely declaring himself a private businessman and traveled abroad between 2016 and 2019 without obtaining a No Objection Certificate (NOC) from SEPCO, his employer. He emphasized that the petitioner concealed his government employment. He denies receiving official letters from the Director of Immigration & Passport or SEPCO regarding the withholding of the petitioner's passport. The FIA officer contends that paragraphs 15 to 19 pertain to a personal dispute between the petitioner and Adeel Mustafa, which falls under the jurisdiction of the local police, not the FIA. The FIA states that they recorded statements from

witnesses and collected records from various departments (Revenue, Banks, FBR). Their investigation revealed no additional records beyond the petitioner's declared property and salary account. They have determined that the petitioner traveled abroad in a private capacity while being a government employee and that he obtained his passport through misrepresentation. The FIA asserts that the petitioner committed offenses under sections 167, 420, 468, and 471 of the Pakistan Penal Code (PPC) and section 5(2) of the Prevention of Corruption Act (PCA) II-1947. These offenses include concealing his government job, obtaining a passport through misrepresentation, and traveling abroad without SEPCO's approval. The FIA requests the court to dismiss the petitioner's petition and grant permission to continue the pending inquiry.

5. We have heard the learned counsel for the parties and perused the record with their assistance and case law on the subject issue.

6. Courts must carefully review the specific facts of each disciplinary case. Here, the FIA claims the petitioner deliberately traveled abroad without proper authorization, using a private passport and misrepresenting the trip as a business venture, which appears to be deception. This raises serious concerns regarding potential undetected illegal activities. The Passports Act of 1974 criminalizes making false statements and endorsements in passports, including falsely claiming to be a businessman to travel without permission.

7. The petitioner's claim of traveling without authorization due to his illness was thoroughly examined by the F.I.A. They noted that there was no evidence of permission of SEPCO, which was/is misconduct on the part of the petitioner as well as criminal action.

8. Does a public servant's repeated unauthorized foreign travel, conducted by misrepresenting himself as a businessman and knowingly circumventing mandatory 'No Objection Certificate' (NOC) requirements, constitute a criminal offense, professional misconduct, or both?

9. Prima facie, unauthorized foreign travel by a public servant, particularly when achieved through deception, is a serious breach of regulations and can lead to both criminal charges and professional disciplinary action. Government employees are typically required to obtain official permission (a "No Objection Certificate" or NOC) before traveling internationally. This requirement ensures

accountability, prevents conflicts of interest, and protects national security. Circumventing these rules, especially by providing false information or misrepresenting the purpose of travel, constitutes professional misconduct. Public servants hold positions of public trust, and such actions erode that trust. Furthermore, intentionally misleading authorities to bypass travel restrictions can be considered fraud or misrepresentation, which are criminal offenses. If the unauthorized travel is connected to corruption, such as accepting bribes or engaging in illegal transactions, the public servant may face severe criminal penalties.

10. In *Aijaz Badshah Vs Secretary Establishment*, 2023 SCMR 407, the Supreme Court clarified that departmental inquiries are essential for determining the truth of misconduct allegations. The competent authority holds primary power in imposing punishment. Courts only intervene when punishment is unlawful, disproportionate, or unreasonable. For severe misconduct, deterrent punishment, such as dismissal, is justified to maintain discipline and set an example.

11. Section 6 of the Passport Act 1974 criminalizes various passport-related offenses, including making false statements in applications, forgery, and wrongful possession. In the present case, the petitioner is accused of misrepresenting his profession as a businessman while being a public servant. It is the responsibility of the Federal Investigation Agency (FIA) to substantiate these allegations with concrete evidence before initiating criminal charges in a court of law. The FIA's competent authority must first determine the severity of the alleged offense. If sufficient evidence exists to support the claim of misrepresentation, the petitioner may be formally charged. Conversely, if the evidence is insufficient, the FIA must prepare a report for the competent authority, who will then decide on the appropriate course of action. This process ensures that any legal action taken is based on credible evidence and a thorough assessment of the alleged offense.

12. This petition is disposed of in the above terms.

JUDGE

JUDGE

