

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

CP No. D- 1868 of 2011

DATE

ORDER WITH SIGNATURE OF JUDGE

14.01.2016

1. For orders on office objection
2. For katcha peshi
3. For hearing of MA 8845/11

Mian Taj Muhammad Keerio, Advocate a/w Petitioner

Mr. Allah Bachayo Soomro Addl.A.G. a/w Hyder Bakhsh Nizamani, Taluka Education Officer (M) Primary Khipro district Sanghar.

Case of the petitioner is that he is serving as Primary School Teacher. He was appointed in service in the year 1988. Initially he suspended in the year 2001. He challenged his suspension before the Service Tribunal Sindh and by the terms of the judgment of the Service Tribunal dated 25.7.2011 he was reinstated in service. However, he has not been paid the salaries for the intervening period i.e. from November 2001 to the date of his joining i.e. 4.8.2011.

The counsel for petitioner has argued that the salary is a fundamental right of the petitioner and it cannot be withheld on any pretext. His view is that when all the facts have been admitted by the official respondents and his service is all admitted then non-payment of salary for the intervening period is against the natural norms of justice. Learned counsel has drawn out attention to the judgment of Service Tribunal particularly to para-11 thereof to establish his case on the point involved.

On the other hand learned A.A.G. states that this payment of intervening period is subject to outcome of the investigation by the Anti-Corruption (E) and after inquiry by

the department has been referred to the Anti-Corruption (E) and unless the findings are reached the salary for the intervening period cannot be paid to the petitioner. He has relied upon the case reported in Government of Sindh v. Nizakat Ali (2011 SCMR 592).

When we confronted this question to the counsel for petitioner he states that in terms of the judgment of the Service Tribunal a period of three months was given for completion of investigation and since within that period neither the investigation has been completed nor any finding has come against the petitioner he is entitled to the payment of salaries for the subject period. We are however, not impressed by his argument. We are of the view that we have gathered after perusing the departmental inquiry report that there are certain serious allegations against the petitioner and unless thorough inquiry and investigation is made by the Anti-Corruption (E) in terms of the order of the Service Tribunal the petitioner cannot be paid for the salaries for the intervening period. The period of three months that has been fixed by the service tribunal for completing the investigation cannot be read to be mandatory in all circumstances and merely because the investigation or inquiry cannot be completed within three months would not make the petitioner entitled to the salaries of the period that is disputed by the department very seriously.

In the circumstances, we see no merit in the petition in hand that is dismissed. However, the petitioner would be at liberty to move the department in case the findings of the investigation by the Anti-Corruption (E) are in his favour.

We however, would like to direct the Anti-Corruption Department to complete the investigation against the petitioner within a period of two months and communicate such report to this court through Additional Registrar.

JUDGE

JUDGE