

**IN THE HIGH COURT OF SINDH, AT KARACHI**

**C.P. No. D-1637 of 2024**

(Ghulam Ghous Miani v/s Province of Sindh and others)

**PRESENT:**

**MR. JUSTICE MUHAMMAD KARIM KHAN AGHA**

**MR. JUSTICE NISAR AHMED BHANBHRO**

Petitioners : Through Mr. Imdad Ali Bhatti, Advocate  
Respondents : Through Mr. Ali Safdar Depar, AAG.  
Date of Hearing : 13.03.2025  
Date of Announcement : 19.03.2025

**ORDER**

**Nisar Ahmed Bhanbhro, J.** Through the instant Petition, the Petitioner has called in question the letter dated 28.03.2024 (**the impugned Letter**) issued by the Principal of Government Premier College II Block H North Nazimabad Karachi (Respondent No 6), relieving thereby the services of Petitioner, directing him to report to the Office of Director College Education Department Karachi.

2. The facts in brief as averred in the petition are that the Petitioner was appointed as Assistant / Head Clerk BS -17 in the College Education Department on 04.05.2011. The Petitioner was promoted to the Post of Superintendent BS -17 on 06.11.2023 and posted at Government Premier College II North Nazimabad, Karachi. The Petitioner discharged his duties diligently and honestly, there was no complaint against him. The Respondent No 6 without any show cause notice

relieved Petitioner from College and directed him to report to the office of Director Colleges Karachi Region. According to the Petitioner, the Respondent No 6 acted illegally, **the impugned letter** was issued without any lawful authority which is liable to be set aside.

3. On notices, Respondent No 4 filed a reply of petition for himself and on behalf of Respondents No 1 & 2. Respondent No 4 submitted that the Petitioner was a habitual troublemaker for the College administration. As per the record available, the Petitioner was called absent from duties without intimation from 19.11.2020 to 20.01.2021. The Petitioner on his promotion as Superintendent BS – 17 was posted in Government Science College Liaqatabad but he refused to discharge his official duties assigned by Principal. The College administration issued him an explanation for absence from duty, but he did not respond. The Principal of the College sent a report regarding Petitioner's continued absence of about 113 days from duties to Director Colleges Karachi on 03.01.2023. On complaints, the College Education Department transferred Petitioner from Liaqatabad College to Government Premier College for Women on 13.06.2023, but Principal of the college kept his joining pending and reported his unsuitability to Secretary College Education Department because of his conduct and immature behavior. The Petitioner was transferred to Government Premier College II Nazimabad Karachi on 06.11.2023 where he failed to discharge his duties as per the orders of College Principal, he misbehaved students and created problems for teachers and administration therefore he was relieved from college and directed to report to the office of Director Colleges Karachi Region, but he did not comply with the orders and filed instant petition.

4. At the very outset, Learned Counsel for the Petitioner was put on notice to satisfy this Court as to the maintainability of this Petition, as the Petitioner was Civil Servant, matter involved terms and conditions of his Service.

5. Mr M. Kamran Alam, Learned Counsel for the Petitioner, contended that the Petition was maintainable under the law, as the Respondent No 6 acted illegally by relieving the Petitioner from college. The Petitioner cannot be relieved of his duties by the Principal as he was grade 17 officer and there was no complaint against him. The matter involved fundamental rights of the Petitioner as such amenable to writ jurisdiction of this Court.

6. Conversely Mr Ali Safdar Depar Learned Assistant Advocate General Sindh contended that the Petition was not maintainable as the Petitioner was a Civil Servant, he was relieved of the duties by the Head of College on account of serious charges of misconduct. The Petitioner was a habitual absentee from duty and not a fit person to perform duties in a college as he misbehaved with academic staff and students. The Petition is not maintainable and barred under Article 212 of the Constitution and should be dismissed.

7. We have heard Learned Counsel for the Parties and examined the material available on record with their able assistance.

8. Admittedly the Petitioner is appointed by the Government of Sindh under the provisions of Sindh Civil Servants Act 1973 and rules thereunder. The Petitioner on acceptance of appointment order is under obligation to perform his duties anywhere to the pleasure of his superiors. Section 10 of the Sindh Civil Servants Act 1973 lays down such obligation on a Civil Servant in the following manner:

**10: Posting and Transfers:** - *Every Civil Servant shall be liable to serve anywhere within or outside the province in any post under Government, Federal Government or any Provincial Government or local authority, or corporation or body set up or established by any such Government.*

9. The perusal of record baffles our wisdom, the Department has handled the case of the Petitioner with laxity and extended him undue favors time and again. Since his appointment in college education department Petitioner played foul and disobeyed directions of high ups, performed job to his sweet will and wish. Despite of the reports of continued absence from duty, misconduct at the place of job, harassment complaints by the academic staff and students no action was taken against him. This reflects the weak functioning of the College Education Department, an institution pivotal to the academic uplift of the province. This Court cannot ignore such a critical situation happening in the Educational Institutions. The principal of all the colleges wherever Petitioner worked sent serious reports of his misconduct but could not succeed in getting the required attention from the officers in the hierarchy and at the helm of affairs. This gloomy and sad state of affairs has led us to the inference that the college education department lacks the services of efficient and decision-making managers.

10. The Learned Counsel for the Petitioner was asked as to whether after being relieved from the Respondent College, Petitioner reported for duty in the office of the Director Colleges, he replied in negative, meaning thereby that since last about one year (28.03.2024 till today) Petitioner was absent from duty and no action in that regard was taken by the Department. The Learned AAG was also

not able to explain this attitude of indifference by the Department to put vigilance on its employees. He contended that no action was taken against the Petitioner as this Petition was pending adjudication. We find no force in the stance of Learned AAG as the restraining order was not passed by this Court, hampering the process of law to take its' due course. The Respondents may have initiated the disciplinary proceedings against the Petitioner in accordance with law and rules under such a situation. Needless to say, that mere pendency of a lis before Court will not in any manner debar the department from initiation of the disciplinary proceedings unless so specifically ordered.

11. The discussion herein above leads us to the conclusion that the Petitioner was a Civil Servant. He would not get the place of duty of his choice, but he was under a statutory liability to perform duties at the place where his services were required by the Department. Respondent No 6, being the Principal of the college, was head of the institution, he was saddled with a responsibility to regulate the college business, in a manner to maintain hygienic educational atmosphere for teachers and students. He was empowered to retain the Services of any employee in the interest of the institution and at the same time he might relieve the services of any miscreant employee as has been done in the instant case. Any action taken by the Principal of the College regarding transfer or relieving of any employee would fall under Rule 9 of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974. The Petitioner was guilty of misconduct defined in Rule 2 of the Sindh Civil Servants (Efficiency & Discipline) Rules 1974, therefore rightly relieved from the College to keep academic atmosphere up to the mark. The matter in essence involved the terms and conditions of the Service of the Petitioner, the remedy available to the Petitioner was to file a departmental appeal / Service Appeal before the appropriate fora. The writ jurisdiction of this

Court was not available in view of the bar contained under Article 212 of the Constitution.

12. We have reached an irresistible conclusion that the Petitioner was guilty of misconduct and the action taken by Respondent No 6 fell within the terms and conditions of service, therefore, Constitution Petition under Article 199 of the Constitution was not maintainable, consequently the same is dismissed with pending applications if any.

**Judge**

**Head of the Constitution Benches**

Jamil