

IN THE HIGH COURT OF SINDH, AT KARACHI

C.P. No. D-5618 of 2021

(Khalid Akram and others v/s MDA Province of Sindh and others)

PRESENT:

MR. JUSTICE MUHAMMAD FAISAL KAMAL ALAM
MR. JUSTICE NISAR AHMED BHANBHRO

Petitioners : Through Mr. Imtiaz Ali Solangi,
Advocate
Respondents : Through Mr. Ali Safdar Debar, AAG.
Date of hearing : 10.03.2025
Date of Announcement : 21.03.2025

ORDER

Nisar Ahmed Bhanbhro, J. Through the instant Petition, Petitioners have sought following relief:

- a. That this Hon'ble Court may be pleased to set aside the impugned dismissal order dated 05.12.2000 passed by the respondent No 2/Secretary Labour under the exercise of powers E&D Rules 1973 instead of RSO 2000, which was introduced w.e.f 20.08.2000 and direct the respondent No.2 to reinstate the petitioners with all the back benefits.
- b. Grant any other relief which might be appropriate and as an equitable relief very soon in the interest

2. Case of the Petitioners as they were appointed as low Grade employees in Grade-1 to 7 during the period of 1989 on contingent basis. The services of Petitioners were regularized on 13.10.1995 by the Committee with the approval of Chief

Minister, Sindh. Petitioners performed their duties in Labour Welfare Department, Government of Sindh until September, 2000, when Show-Cause Notice was given to them under Sub-Rule 3 of Rule-5 of the Sindh Civil Servants (Efficiency and Discipline) Rules, 1973. On the account they were appointed without adopting due course of Law. Petitioners has submitted their Replied Show-Cause Notice on 28.09.2000 being not satisfied with the Reply the Authorities issued the Final Show-Cause Notice on 16.10.2002 submit reply within seven days as to why the major Penalty of removal from service may not be imposed against the Petitioners. On 02.11.2000 letter of personal hearing was issued but they were never called for hearing and finally on 05.12.2000 Petitioners were awarded major penalty removal from services as provided under Rule-4 (1)(b)(iii) of the of the Sindh Civil Servants (Efficiency and Discipline) Rules, 1973. The Petitioners filed Constitution Petition No.D-2575 of 2010 of this Court seeking reinstatement in service with back benefits. The said Petition was disposed of vide Order dated 25.01.2016 with directions to Respondent No.3 (Assistant Commissioner, Mines Laour Welfare) to decide the Appeal of the Petitioners within three months from the date of the Order in accordance with the law. That the Respondents heard the Appeals of Petitioners and rejected the same vide Order dated 15.04.2021 and such letter was issued by the Services General Administration & Coordination Department, Government of Sindh (“SGA&CD”) to the Petitioners. The Petitioners contends that under the similar circumstances the other employees were removed from service alongwith Petitioners, were reinstated but the Respondents singled out Petitioners and discriminated them by dismissing their appeals.

3. On Notices, the Secretary Labour Department, Government of Sindh and Assistant Commissioner, Mines Labour Welfare (Respondents No.2 and 3) filed a joint written Reply, wherein, they have raised an objections as to the maintainability of Petition in view of the Article 212 of the Islamic Republic of Pakistan, 1973 as the Petitioners were the Civil Servants and action for removal of service was taken in terms of the Efficiency and Disciplinary Rules which falls within of terms and conditions of the Service. It has been averred in the Comments that the then Assistant Commissioner, Mines Labour Welfare were namely Rabnawaz had illegally appointed the Petitioners without the approval of competent authority against said posts. The appointment of the Petitioners were illegal and for the purpose an Inquiry Committee was constituted by the Department which opined that the appointment of the Petitioners were illegal and without approval of the competent authority and against any vacant posts. The Petitioners were taking salaries without attaining their jobs. The employees who were reinstated by the Department their case warrant different footings. The Petitioners had filed Constitution Petition No.D-2575 of 2010 before this Court Bench at Sukkur which was disposed of vide Order dated 25.01.2016 with directions to decide the Appeal of the Petitioners. The Appeal of Petitioners was heard and decided in accordance with the law and such compliance Report was submitted by the Secretary Labour Mines / Labour Welfare Organization before this Court Bench at Sukkur. The Petitioners after their dismissal from service did not prefer any Service Appeal before the concerned forum, as such, this Court cannot entertain this Petition under Article 199 of the Constitution. Learned

counsel for the Petitioners submits that the impugned Order dated 05.12.2020 have been passed in violation of the Article 10-A of the Constitution as no proper inquiry was held by the Department and the Petitioners were not heard before passing the impugned Orders. He contended that Petitioners were appointed in service by adopting due course of law and their services were regularized on the basis of the Report of Inquiry Committee and since their regulation bears the worth by the Department for many years. He contended that under the similar circumstances, the other employees were taken back on their services but the Petitioners have been discriminated without any rational cause which violates their fundamental rights enshrined under the Article-25 and 27 of the Constitution. He contended that is no delay approaching this Court as after the disposal of earlier Petition filed in the year of 2016, the Authority has passed a final Orders in the year 2021, therefore, the Petition is not hit panaches.

4. Conversely Learned Assistant Advocate General Sindh has strongly opposed this Petition, contending that the Petitioners were appointed in service without adopting due course of law by Assistnat Commissoiner who otherwise not competent to appoint and an Inquiry was conducted by the Department in which Appointment Letters of Petitioners declared illegal and bogus, therefore, the disciplinary proceedings were initiated against them. They were issued Show-Cause Notices in terms of 4 and Final Show-Cause Notice in terms of Rule-5 of the Sindh Civil Servants (Efficiency and Discipline) Rules, 1973. That after an proper hearing the competent authority found it proper and the fitness dispensed with a regular inquiry in the matter as sufficient material was available that appointment of

the Petitioners were not genuine, therefore, the authority being satisfied removed the Petitioners from vide Order dated 05.12.2000. The Petitioners did not prefer any Department Appeal so also Service Appeal as Civil Servants impugned action were taken under the Service Rules. The first Petition has been preferred after the 10 years of impugned action and the second Petition has been after the 20 years without furnishing any explanation for such huge delay. The Petitioners have slapped over their rights and even did not choose the right forum for redressal of their grievance. This Petition is barred under Article 212 of the Constitution, liable to be dismissed.

5. We have heard Learned Counsel for Petitioners, Learned Assistant Advocate General and examined the record with their able assistance.

6. It is an admitted position that Petitioners were Civil Servants and the action against them were taken by the competent authority in terms of Sindh Civil Servants (Efficiency and Discipline) Rules, 1973 which empowers the competent authority to impose major penalty of removal, dismissal from the service. Such actions are amenable to the jurisdiction of the Tribunal established under Sindh Services Tribunal Act, 1973. Petitioners did not file any departmental Appeal before the Department so also they did not prefer any Service Appeal before the concerned forum but after the lapse of 10 years from their removal of services filed this Petition before this Court which was also disposed of without granting any relief to the Petitioners with directions that their Appeal if any pending before the Department shall be decided in accordance with the law. After decision in Appeal, the Petitioners preferred this Petition which is not maintainable being barred under

Article 212 of the Constitution as the Petitioners admittedly had the remedy under the law to file the Service Appeal. The Petitioners have impugned action of the Authority almost after 20 years of the impugned action which was taken on 05.12.2000, for which they have failed to furnish any explanation. Petitioners slapped over their rights, therefore, they cannot be granted any relief. This Petition therefore fails being not maintainable and meritless, accordingly dismissed with listed applications.

Judge

Judge

Jamil