

IN THE HIGH COURT OF SINDH, AT KARACHI

Before:-

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-9013 of 2018

Raja Naveed V/S Province of Sindh & 06 others.

Date of hearing
& decision: 12.02.2020

Mr. Jan Muhammad Khaskheli, advocate for the petitioner.
Mr. Ali Safdar Debar, Assistant Advocate General alongwith Mr. Raza Mian, DSP (Legal) and Saeed Ahmed Rind, DSP, CIA.

ORDER

ADNAN-UL-KARIM MEMON, J: Petitioner claims to have been appointed on 22.11.2011 as Police Constable in Sindh Police department and has been performing his duties at different police stations and due to involvement of his uncle in departmental proceedings, he has been deprived of his salary which has not been paid to him since September, 2018. He has placed on record relevant documents including the service book.

2. At the outset, this Court required from the counsel for the petitioner to explain as to how the instant petition is maintainable before this Court against the stoppage of his salary. In response to the query raised by this Court regarding maintainability of the instant petition. Mr. Jan Muhammad Khaskheli, learned counsel for the petitioner, has contended that the instant petition is very much maintainable in law and briefed us on the facts and law ; that the petitioner was appointed as Police Constable vide office order dated 22.11.2011 and was deputed to undergo Recruit Training Course with effect from 01.01.2014 at Recruit Training Centre, Badin, vide letter dated 19.01.2014 issued by Superintendent of Police Thatta ; that while stopping the salary of the petitioner due process of law has not been followed ; that the petitioner is being deprived of his lawful remuneration/salary despite being eligible/selected and qualified candidate, appointed after due process of law; that the petitioner was appointed on the vacant position of Police Constable (BPS-05) ; that stoppage of his salary is violation of fundamental rights ; that the inquiry regarding fake/ illegal appointments was initiated against the concerned officers, who are facing the criminal proceedings before the competent court of law as such petitioner cannot be saddled with any penalty. He next submitted that during audit proceedings of the concerned department, it transpired that the over payment in salary to the Constables and other officials were made and recovery proceedings were initiated ; that on the aforesaid factum his salary was stopped with effect from

September, 2018 for which he repeatedly approached the respondents for issuing of salary but to no avail ; that there is no justification to stop the salary ; that there is no relieving order of the petitioner from service and there is no termination letter as well. He lastly prayed for allowing the petition with direction to the respondents to continue him in the service as Police Constable and pay him his due salary in accordance with law.

3. Conversely, learned Assistant Advocate General has opposed this petition on the ground that the basic appointment of the petitioner is/was fake, therefore, the question of salary does not arise ; that the impugned action has been taken against the petitioner and other ghost employees in Police Department, in pursuance of orders passed by the Hon'ble Supreme Court of Pakistan in (1) **Cr. Petition No.89-K of 2014** (SHO PS Sachal Malir V/S the State and another), and (2) **Civil Petitions No.820-K of 2016** and other connected petitions (Inspector General of Police, Sindh etc. V/S Nasrullah Lolai and others). We asked him to satisfy as to why respondents have stopped his salary and are not allowing him to perform his duties and such action has been taken by them without assigning any reason and in violation of well-settled principles of natural justice. Learned AAG replied that in compliance of the orders passed by the Hon'ble Supreme Court of Pakistan in the aforesaid proceedings an inquiry committee was constituted to probe the fake appointments, and during inquiry, salary draw scam was surfaced in district Thatta. The Committee thoroughly probed the matter and gave its findings vide letter dated 01.10.2018, whereby petitioner and several others employees were found guilty, who had been appointed without due process of law and in the case of petitioner his name was interpolated through criminal manipulation in the record of Accounts Branch district Thatta, but were not included in the working strength of the district, by his uncle Raja Shahid (Accountant) against whom departmental as well as criminal proceedings are pending ; that name of the petitioner has been struck off as Police Constable being fake appointee in the light of the report of inquiry committee as discussed supra and action has been taken against the delinquent officials involved in the scam of fake appointment in district Thatta ; that the matter has been referred to NAB Karachi for further probe and action in accordance with law. He lastly prayed for dismissal of this petition.

4. We have heard learned counsel for the respective parties and have minutely perused the record. Vide orders dated 27.02.2015 & 07.8.2019 passed by the Hon'ble Supreme Court of Pakistan in the aforesaid cases, direction was issued to take disciplinary proceedings with regard to patchy character of the police officials and action against them having patchy record whereby departmental punishments / penalties were restored.

5. The issue of maintainability of the captioned Constitutional petition has been raised, in view of the verdicts by the Honorable Supreme Court of Pakistan in the case of Punjab Textbook Board Lahore & others Vs. Muhammad Akhtar Sherani & others (PLD 2001 SC 1032) and Ali Azhar Khan Balouch Vs. Province of Sindh & others (2015 SCMR 456), as such we would confine ourselves to that issue only and refrain ourselves to dilate upon the merits of the case, if we find the instant matter is not maintainable under the law.

6. During the course of arguments, we asked learned counsel for the petitioner to show us the advertisement, call letter, interview letter, offer letter, medical letter and other requisite documents to show that the petitioner's appointment for the post of Police Constable in BPS-05 was/is genuine. He heavily relied upon the letter dated 22.11.2011 which is neither on proper official letter head nor stamped, which document is disputed by the respondents being fake one, therefore, subsequent documents cannot be relied upon.

7. In our view, once the Competent Authority probed into the fake appointments and salary drawn scam in district Thatta and in the terms of the findings action has been taken against the beneficiaries, this factual aspect cannot be looked into in constitutional jurisdiction under Article 199 of the Constitution.

8. Reverting to the claim of the petitioner that he was legally appointed and the Hon'ble Supreme Court has not given any observation against him, therefore the Respondents cannot stop his salary as he is still working on his post, suffice to say that the petitioner is Civil Servant therefore, the forum chosen by him by invoking the Constitutional Jurisdiction of this Court under Article 199 of the Constitution is not proper under the law in view of the bar contained in Article 212 of the Constitution. Since the expression terms and conditions includes salary and the Sindh Services Tribunal has jurisdiction to decide such issue and the validity of the impugned action, this petition is not maintainable. We are fortified by the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of Punjab Textbook Board Lahore & others Vs. 9 Muhammad Akhtar Sherani & others, **PLD 2001 SC 1032**. The Hon'ble Supreme Court has held at paragraph No.8, as under:-

“ Even the case reported as Administrator, District Council, Larkana and another v. Ghulam Khan and 5 others (2001 SCMR 1320) is also not attracted herein that in he said precedent the question of withholding of salaries of the employees was involved as their appointments were allegedly made in violation of the rule. We respectfully disagree with the dictum that the objection raised on behalf of the petitioners therein to the effect that the High Court has no jurisdiction to entertain the matter in relation to salary of the employees as it has a direct nexus with the terms and conditions of service of the employees in view of the bar imposed

under Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973 was a technical objection. In our considered view the objection to the jurisdiction of the High Court to entertain a writ petition raised on behalf of the petitioners therein, was not technical in nature but going to the very root of the case. This Court has repeatedly held that the Service Tribunal alone is the appropriate forum having jurisdiction to deal with matters relating to the terms and conditions of service of civil servants in view of the bar contained in Article 212 of the Constituent. To this extent we respectfully overrule the above dictum.”(Emphasis Added).

9. Petitioner has thus failed to make out his case for indulgence of this Court under Article 199 of the Constitution at this stage, in the light of dicta laid down by the Hon’ble Supreme Court of Pakistan in the cases discussed supra. Consequently the instant Petition stands dismissed along with the listed applications. However, the Petitioner may avail the appropriate remedy as provided to him under the law.

JUDGE

JUDGE

Nadir*