

P L D 2000 Supreme Court 58

Present: Saiduzzaman Siddiqui, Sh. Ijaz Nisar and Sh. Riaz Ahmed, JJ

ABDUL BAQI SIDDIQUI---Petitioner

versus

PROVINCE OF SINDH through Chief Secretary, Sindh, Karachi and 2 others---Respondents

Civil Petition for Leave to Appeal No. 1026 of 1999, decided on 28th June, 1999.

(On appeal against the judgment dated 11-5-1999 of the Sindh Service Tribunal at Karachi in Appeal No.98 of 1998).

Civil service---

---Re-employment---Notification of re-employment of civil servant was issued before his attaining the age of superannuation and regular retirement---Such notification of re-employment could be rescinded by the Competent Authority before 'its implementation and principle of locus poenitentiae would not be attracted in the case.

Shah Abdur Rashid, Advocate Supreme Court and Malik Mehar Khan, Advocate-on-Record for Petitioner.

Nemo of Respondents.

Date of hearing: 28th June, 1999.

ORDER

SH. RIAZ AHMED, J.---Leave to appeal is sought against the judgment dated 11-5-1999 delivered by the Sindh Service Tribunal whereby an appeal preferred by the petitioner against the refusal of the Government of Sindh to re-employ the petitioner on contract was dismissed. Before proceeding further it would be necessary to make a reference in brief to the facts of this case.

2. The petitioner was appointed as the Managing Director, Karachi Water and Sewerage Board. In normal course, he would have retired from service on 8-1-1994 on attaining the age of superannuation. About two years before his retirement, i.e. on 1-12-1992 the petitioner applied for 12 months' leave preparatory to retirement. According to the petitioner he was persuaded not to seek Leave Preparatory to Retirement and it was suggested to him by the then Chief Secretary, Government of Sindh that since the Government of Sindh was not in a position to find a suitable replacement, he should continue to perform the duties. According to the petitioner, he, thus, consented to continue to work as Chief Executive of the Board. According to the

petitioner he was given to understand that he would be given extension in service for a period of three years after his retirement. In this behalf on 6-6-1993 a summary was sent to the then Chief Minister for allowing the petitioner to work for another period of three years after his superannuation and the said summary was approved by the then Chief Minister, Sindh on 18-7-1993. The petitioner further urged that on 20-7-1993 he received a letter from M/s. Balfour International Consulting Engineers Ltd. of U.K. offering him a post to work on their projects around Asia on a salary of Rs.42,000 per month plus Rs.10,000 as expenses. In the meanwhile, the Government of Sindh issued a Notification dated 25-7-1993 re employing the petitioner with effect from 9-1-1994 on the basis of the approval of the then Chief Minister. The petitioner alleged that on the issuance of this Notification he declined to accept the offer of M/s. Balfour International Consulting Engineers. At this juncture, it will be advantageous to make a reference to the background and circumstances of this offer made to the petitioner by M/s. Balfour International Consulting Engineers. It was admitted by the petitioner before the Tribunal that at the time of the offer the said firm of engineers was working on some project of the Karachi Water and Sewerage Board (KWSB). It is pertinent to mention that all this development had taken place before the date of superannuation of the petitioner. On 25-10-1993 the earlier Gazette Notification dated 25-7-1993 was rescinded. It was argued before us that re-employment notification was rescinded in a mala fide manner because of the political change in the office of the Chief Minister and no show-cause notice was given to the petitioner before cancelling the said notification and therefore, the petitioner was constrained to invoke the jurisdiction of the Sindh High Court by way of filing a Constitution Petition. On a notice issued to the Government of Sindh, the Advocate-General of Sindh entered appearance, who pleaded that under a policy decision the re-employment to the petitioner was declined. It was urged by the petitioner that during the pendency of the writ petition he was coaxed and pressurized and was threatened with dire consequences and, therefore, he readily made a statement in Court that the differences would be reconciled outside the Court and, thus, the Constitution Petition was dismissed as withdrawn.

3, The petitioner, thus, continued to work as Managing Director, K.W.S.B. beyond 10-1-1994, i.e. the date of his superannuation and on 23-1-1994 the respondents issued notification to the effect that the petitioner's contract for service beyond the age of superannuation would terminate after six months. The terms and conditions of the re-employment were notified on 9-4-1994 and it was prescribed that the contract was liable to terminate after six months. On 24-5-1994 the petitioner was transferred from the K.W.S.B. with immediate effect and was directed to report in the Local Government Department till further orders. The petitioner complied with the said order, but no posting orders were issued. According to the petitioner, he was then involved in a criminal case for embezzlement, which resulted in his acquittal because no evidence could be produced to prove his guilt. On 5-3-1997 the petitioner submitted departmental appeal/review to the Chief Minister through the Chief Secretary, Sindh, which was not decided and, thus, the petitioner was constrained to file another Constitution Petition in the Sindh High Court. The Sindh High Court then directed that- the appeal/review of the petitioner should be decided within a period of one month, but the same was decided after four months and on 6-1-1998 the Additional Advocate-General, Sindh informed the Court that the appeal/review of the petitioner had been rejected. The petitioner then applied for a copy of the order rejecting his appeal, but the same was not supplied to him and, thus, he invoked the jurisdiction of the Sindh Service Tribunal by way of filing an appeal, which was dismissed vide order impugned.

4. While seeking leave to appeal against the aforesaid order the learned counsel for the petitioner vehemently contended that the order rejecting his appeal was passed with ulterior motive and the order was mala fide and, thus, was not sustainable. It was also

argued that the notification dated 25-7-1993 re employing the petitioner with effect from 9-1-1994 could not have been rescinded and hence a vested right had accrued in favour of the petitioner to continue to serve for a period of three years beyond the age of superannuation. It was further argued that the notification dated 23-1-1994 re-employing the petitioner on contract for a period of six months was arbitrary and the petitioner deserved to be re-employed for a period of three years instead of six months. It was also argued that in the initial notification for re-employment of the petitioner the period for re-employment was deliberately omitted although at one point of time the Chief Minister had agreed to re-employ the petitioner for a period of three years.

5. After anxious consideration, and having heard the learned counsel at length, we do not find merit in any of the contentions raised on behalf of the petitioner. In the first instance, we fail to understand as to how and in what circumstances before his retirement a notification had been issued on 25-7-1993 to re-employ the petitioner for a period of three years beyond the age of superannuation. It seems that the petitioner used offer of the firm as a tool to manoeuvre his re-employment. In our view the Tribunal rightly observed that this development was dubious in nature and furthermore the petitioner was not an exceptionally qualified person so as to find his replacement was difficult. The petitioner was an ordinary graduate in engineering and, thus, the Tribunal rightly observed that before the implementation of the notification the same could have been rescinded. The principle of locus poenitentiae would not be attracted because the notification dated 25-7-1993 re-employing the petitioner for a period of three years beyond the age of superannuation had not been acted upon. The notification was rescinded before the petitioner attained the age of superannuation and in our view the Government of Sindh was competent to rescind the notification because no Government servant has a vested right to continue in service beyond the age of superannuation except in cases of exceptional nature and for that too under the policy laid down, by the Government the extension could have only been ordered by an authority next higher to the appointing authority. Admittedly the appointing authority of the petitioner, who was working in BPS-20 was the Chief Minister and the extension in service could have only been ordered by the next higher authority, i.e. the Governor Sindh. Under the Sindh Government policy letter referred to by the Tribunal the extension in service not having been granted by the Governor Sindh had no relevance. Assuming otherwise, even then as already discussed, the petitioner cannot rely upon the notification dated 25-7-1993 re employing him beyond the age of superannuation because the same was issued before his retirement and was rescinded before the same could be acted upon. No cogent material was brought on the record to substantiate the plea of mala fide. In this view of the matter, we do not find any merit in this petition. The same is- hereby dismissed.

M.B.A./A-204/S Petition dismissed.

