

2023 P L C (C.S.) 823

[Lahore High Court]

Before Jawad Hassan, J

MUHAMMAD AMJAD

Versus

GOVERNMENT OF THE PUNJAB through Secretary Education and another

Writ Petition No.86112 of 2017, decided on 16th January, 2023.

(a) Constitution of Pakistan---

---Art. 199---Civil service---Contractual employment---Petitioner was employed as an Elementary School Educator on a contract basis, which was extended periodically---However, during the course of his employment, he got involved in a criminal case and was subsequently convicted and sentenced to life imprisonment---Petitioner filed an appeal before the High Court, which was accepted, and he was acquitted of the charges---While the criminal trial was ongoing, the respondent terminated the petitioner's contract of employment---After his acquittal, the petitioner sought reinstatement, but his request was denied---Validity---Petitioner was treated in accordance with the terms and conditions of his contract of employment, which he had accepted at the time of his appointment---As such, he could not deviate from those terms at present stage--
-Additionally, the issue pertained to government policy matters, which the High Court could not interfere with---It was the government's prerogative to determine the manner in which appointments should be made, and such policy decisions were typically not subject to legal challenge unless they failed the test of reasonableness---Constitutional petition was dismissed.

Dr. Muhammad Islam v. Government of N.W.F.P. through Secretary, Food, Agriculture, Livestock and Cooperative Department, Peshawar and 2 others 1998 SCMR 1993; Superintending Engineer GEPCO Sialkot v. Muhammad Yousaf 2007 SCMR 537 and Director General, Intelligence Bureau, Islamabad v. Muhammad Javed and others 2012 SCMR 165 distinguished.

(b) Constitution of Pakistan---

---Art.199---Constitutional jurisdiction---Policy matter---Scope---Not in the domain of the Courts to embark upon an inquiry as to whether a particular merit policy is wise and acceptable or whether better policy could be evolved---Court can only interfere if the policy framed is absolutely capricious and non-informed by reasons, or totally arbitrary, offending the basic requirement of the Constitution.

Dr. Akhtar Hassan Khan and others v. Federation of Pakistan and others 2012 SCMR 455 and Pakistan Medical and Dental Council, Islamabad through Authorized Representative v. Maleeha Syed and 4 others PLD 2020 Lah. 16 ref.

Muhammad Younas Bhullar for Petitioner.

Rana Zain Tahir, Assistant Advocate-General for Respondents.

ORDER

JAWAD HASSAN, J.----The Petitioner through this writ Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the "Constitution") has called in question the order dated 16.05.2017, passed by the Respondent No.2/Chief Executive Officer, District Education Authority, Sialkot, whereby his appeal against termination of his contract was rejected.

2. Learned counsel for the Petitioner submitted that the Petitioner was appointed as an Elementary School Educator on 30.09.2002 on contract basis, which was extended from time to time. He added that unfortunately he got involved in a false criminal case, convicted and sentenced to life imprisonment against which he filed Appeal before this Court, which was accepted and he was acquitted of the charge. Thereafter the Petitioner filed an Application before the Respondent No.2 for his reinstatement into service, which was rejected vide the impugned order dated 16.05.2017. He added that impugned termination order infringed Petitioner's fundamental rights of life (Article 9), right of exploitation (Article 3) as well as right of livelihood (Articles 37 and 38) as guaranteed by the Constitution, hence the same are liable to be set aside. Learned, counsel to strengthen his arguments relied on the judgments reported as "Dr. Muhammad Islam v. Government of N.W.F.P. through Secretary, Food, Agriculture, Livestock and Cooperative Department, Peshawar and 2 others" (1998 SCMR 1993), "Superintending Engineer GEPCO Sialkot v. Muhammad Yousaf" (2007 SCMR 537) and "Director General, Intelligence Bureau, Islamabad v. Muhammad Javed and others" (2012 SCMR 165).

3. Learned Law Officer objected to the maintainability of this petition in the light of the report and parawise comments and defended the impugned order being passed in accordance with law. Further averred that the Petitioner was treated as per terms and conditions of his contract employment which he duly accepted at the time of appointment, therefore, now at this stage he cannot deviate from the same. Moreover, no provision of Appeal exists under the contract Rules/Policy, therefore, this Petition be dismissed.

4. Heard. Record perused.

5. The bare perusal of the record reveals that Petitioner was appointed as an Elementary School Educator on 30.09.2002 on the basis of contract, which was extended from time to time. In the year 2008, the Petitioner was involved in a criminal case, wherein he was convicted and sentenced to life imprisonment, against which he filed Appeal before this Court, which was accepted and he was acquitted of the charge. Record also reveals that during proceedings of aforesaid trial, the District Education Officer (M), Elementary Education, Sialkot

cancelled/terminated the Petitioner contract vide order dated 26.03.2011. On acquittal from the aforesaid criminal case, the Petitioner filed an Application/Appeal before the Respondent No.2 for reinstatement into service, which was rejected vide the impugned order dated 16.05.2017. The relevant paragraph of the impugned order is as under:

"As per notification of Government of the Punjab, Education Department (School Wing) notified vide No.SO(SE-IV)3-67/06, dated 05.09.2006, relevant Para 2 wherefrom, is that "As per terms and conditions of Educator appointed, on contract basis, if contract of an employee is terminated, the employee cannot be re-instated, hence the undersigned feels no good grounds/reasons to interfere in the order vide No.1686-87/ Enq. Dated 26.03.2011, passed by the Competent Authority, i.e. District Education Officer (EE-M), Sialkot."

The Report and parawise comments also depicts that the Petitioner was treated as per terms and conditions of his contract employment which he duly accepted at the time of appointment, therefore, now at this stage he cannot deviate from the same. Moreover, no provision of Appeal exists under the contract Rules/Policy. When confronted with this situation, learned counsel for the Petitioner has no satisfactory reply to it. Moreover, the case laws relied upon by learned counsel for the Petitioner, are distinguishable and not applicable in this case.

6. Even otherwise issue relates to the policy matter and this Court cannot interfere into the policy matters of the Government, particularly when it is in the public interest. It is not in the domain of the Courts to embark upon an inquiry as to whether a particular merit policy is wise and acceptable or whether better policy could be evolved. The Court can only interfere if the policy framed is absolutely capricious and non-informed by reasons, or totally arbitrary, offending the basic requirement of the Constitution. It was for the Government to decide on how and in what manner the appointments should be made and such a policy decision normally would not be open to challenge subject to its passing the test of reasonableness. Reliance is placed on "Dr. Akhtar Hassan Khan and others v. Federation of Pakistan and others" (2012 SCMR 455) and "Pakistan Medical and Dental Council, Islamabad through Authorized Representative v. Maleeha Syed and 4 others" (PLD 2020 Lahore 16).

7. In view of above, the instant petition, being not maintainable, is hereby dismissed.

SA/M-56/L Petition dismissed.