

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P No.1971 of 2020

Hafiz Muhammad Abdullah

Vs

The Chairman National Accountability Bureau, etc...

Date of Hearing: 09.10.2020

Petitioner By: Mr. Khaliq-ur-Rehman Saifi, Advocate

Respondents By: Mr. Yasir Saleem Rana, Advocate

Ghulam Azam Qambrani, J: Through this petition, the petitioner has invoked the jurisdiction of this Court filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following prayer;-

“It is humbly prayed that this Hon’ble Court may graciously upon acceptance of this writ petition and the impugned order dated 06.01.2020 of acceptance of resignation tendered by the petitioner is involuntarily under compulsion, force, coercion and duress passed by the respondent No.2 may graciously be declared illegal, unlawful, void, ab-initio and ineffective upon the rights of the petitioner thus be set aside and the petitioner be reinstated in service with all back benefits as transfer is itself violation of NAB’s own policy and compelled the petitioner to part away with the job.

And any other relief, which this Hon’ble Court deems fit and proper may also be awarded.”

2. Briefly stated facts of the case are that the petitioner was appointed as Assistant Director (BPS-17) in the office of respondents No.1 & 2 and initially posted at Multan. The petitioner joined the office of respondents and performed his duties with full diligence. After sometime, he was transferred from Multan to Quetta and joined his duty at Quetta and completed his two years tenure at Quetta office. In the month of January, 2019 he applied for transfer from Quetta to Multan according to policy. On 23.04.2019, the petitioner severely fell ill and suffered from Typhoid fever and on the recommendations of government doctors, the petitioner requested

for leave by filing of application dated 25.04.2019 before respondent No.3, but the respondent No.3 who had previous grudge converted casual leave into absent that too after four days i.e. on 29.04.2019. On 31.10.2019, the petitioner was further transferred from Quetta to Peshawar NAB against his several requests. He got foot injury and because of that he was unable to join the new station of posting, in such a situation, he had no other option except to resign from the service, which was accepted on 06.01.2020. After this, on 18.01.2020, the petitioner filed departmental appeal before the respondent No.1 which was declined vide letter No.3 (1692)/M/2016/PM-V, dated 06.07.2020 without providing opportunity of personal hearing.

3. Learned counsel for the petitioner has contended that the petitioner was unable to join new place of posting because parents of the petitioner are patients of different diseases and there is no male member at home to look after them; that prior to three weeks of resignation, the petitioner had got foot injury and doctors advised him to take bed rest for six weeks and due to worst condition, the petitioner involuntarily tendered resignation from service on 20.11.2019 as was unable to shift to new place of posting; that the respondent has not seen the case in its true perspective thus has committed material illegalities while accepting the resignation tendered by the petitioner under force, coercion and duress; that the declining of departmental appeal was against the Rule 8.04 (4) & Rule 14.01 of NAB Employees Terms & Conditions of Service, 2002 ; that the resignation was result of duress. Lastly, prayed for acceptance of the petition.

4. Conversely, learned counsel for the respondents has opposed the contentions of learned counsel for the petitioner and contended that the performance of the petitioner was not found up to the mark; that on 21.11.2017, a show cause notice was issued to the petitioner under Section 11.02 (b) of NAB Employees Terms & Conditions of Service, 2002; that on 30.01.2018, the authorized officer had imposed the minor penalty of "Censure" under Section

11.03 (1) (a) (i) of NAB Employees Terms & Conditions of Service, 2002 ; that again show cause notice was issued under Rule 11.05 (2) of NAB Employees Terms & Conditions of Service, 2002; that on 31.10.2019 the authorized officer had imposed minor penalty of "withholding of promotion for a period of three years" being found guilty of the charges of 'misconduct & inefficiency'. Further contended that on 31.10.2019 notification was issued regarding transfer from NAB Balochistan to NAB (KP) with immediate effect; that on 18.12.2019 the petitioner deposited a sum of Rs. 114,168/- on account of recovery of Training Charges (IBIC-VII-2015); that on 06.01.2020 the competent authority had accepted the resignation from service. Next contended that when the petitioner submitted his resignation and its subsequent acceptance, no disciplinary proceedings under NAB Employees Terms & Conditions of Service, 2002 were pending against the petitioner and the petitioner neither made any application under Rule 14.01 of NAB Employees Terms & Conditions of Service, 2002 nor the said rule is attracted in the case of petitioner. Lastly, urged for dismissal of petition.

5. I have heard the arguments of learned counsels for the parties and have perused the material available on record with their able assistance.

6. Perusal of the record depicts that the petitioner had voluntarily resigned from service and his resignation was accepted by the competent authority on 06.01.2020. From that date, the relationship of employer and the employee between the petitioner and the respondents ceased to have existed and thereafter he had no right, whatsoever, either to claim the post or a right to withdraw his resignation, which had already become effective after its acceptance on 06.01.2020. On acceptance of the resignation by the competent authority, the petitioner has no vested right to seek withdrawal of the resignation at this stage. It was open to the petitioner before the acceptance of the resignation to withdraw it, as per Rule 8.04 (2) of NAB Employees Terms & Conditions of Service, 2002.

7. Perusal of the record further reveals that the petitioner submitted his resignation on 20.11.2019, which was accepted on 06.01.2020 by the competent authority and before the acceptance of resignation, he was asked to deposit the training costs incurred upon him, which he voluntarily deposited on 19.12.2019. The relevant Rule 8.04 (4) of NAB Employees Terms & Conditions of Service, 2002 reads as follows:-

8.04 Principles Governing Resignation:-

- (1) *Subject to any provision of law in force for the time being, a temporary or permanent employee may resign from his post. The resignation shall not become effective unless it is accepted by the appointing authority. Till such time the resignation is accepted, the employee shall continue to serve and cannot absent himself from his duties without proper leave. Any violation in this behalf shall amount to misconduct and the employee shall make himself liable to disciplinary action.*
- (2) *If an employee after submission of his resignation withdraws it before it is accepted, the resignation shall be deemed to have been withdrawn.*
- (3) *If an employee withdraws his resignation after its acceptance by the appointing authority, but before it becomes effective i.e. before the employee is relieved, it will be open to the authority which accepted the resignation to allow the employee, on the merits of the case, to withdraw the resignation.*
- (4) *The resignation of an employee shall not be accepted if any disciplinary proceedings are contemplated or are in progress.*
- (5) *An employee submitting his resignation shall be required to clear all dues payable by him.*

8. Furthermore, apart from acceptance of resignation the petitioner voluntarily returned amount of Rs.114,168/- which shows that the resignation tendered by the petitioner was voluntarily and no evidence of coercion is reflected. The petitioner's letter of resignation is reproduced herein below:-

"To,

*The Director General (HR)
NAB Headquarter, Islamabad.*

Resignation from Service

Respected Sir,

It is stated respectfully that the undersigned has been transferred to NAB (KP) vide NAB HQ Notification No.3 (1692)/M/2016-PM-V dated 31st October, 2019. The undersigned is unable to join new place of posting because of the reasons that the parents of the undersigned are old and also patients of different diseases. Since the undersigned is out of home since last three years, i.e. in Balochistan, so the parents are severely neglected. Furthermore, the undersigned got foot injury 3 x weeks before and doctors advised to take much care up to 6x weeks.

2. Keeping in view the above mentioned facts the undersigned feels unable to shift and join new place of posting and continue with NAB service. Therefore, the undersigned tenders resignation from service w.e.f. 30th November, 2019.

3. It is, therefore, requested to accept my apology and resignation from service.

4. I shall be very thankful to you for this act of kindness, please.

Hafiz Muhammad Abdullah

Assistant Director (BPS-17)

NAB (Balochistan) Quetta

Dated Nov 20, 2019

9. Reliance is placed in the case law titled as "Anwar-ul-Haq Vs Secretary, Ministry of Industries and Production, Government of Pakistan Islamabad and others" [2010 SCMR 1386]. In the case titled "Registrar, Lahore High Court, Lahore Vs. Syed Javed Akbar & another" [2007 SCMR 792], it has been held as under:-

"4. It is settled law that a resignation can be withdrawn or recalled before its acceptance by the competent authority. This view is indirectly supported by the observations of their Lordships of the Indian Supreme Court in a decision reported in Jai Ram's case AIR 1954 SC 584. The relevant observations is as follows:-

"It may be conceded that it is open to a servant, who has expressed a desire to retire from service and applied to his superior officer to give him the requisite permission, to change his mind subsequently and ask for cancellation of the permission thus obtained; but he can be allowed to do so, so long as he continues in service and not after it has terminated."

10. In the case of "Chaudhry Khush Akthar Subhani Vs. Returning Officer and another" (2008 YLR 2132), it has been held by the Hon'ble High Court of Sindh as under:-

"5..... If for the sake of argument we accept that respondent No.2 had resigned, the fact remains that mere tendering or submitting of resignation is not tantamount to termination of service of a Government servant. In order for the same to become effective, its acceptance by the competent authority is an essential requirement. Till such time the resignation is accepted by the competent authority, the Civil/ Government servant would continue in service and would be under an obligation to perform his duties and if he omits to perform his duties without prior authorization, he would be deemed to be an absentee and would be liable for disciplinary action...."

11. Perusal of resignation shows that there is nothing to suggest that the same was taken by coercion or duress. The petitioner claims to have approached the departmental authorities in order to withdraw his resignation. Prior to his request for withdrawal of his resignation, same had already been accepted by the competent authority. In *Corpus Juris Secundum*, Volume LXXVII at page 77 "Resignation" has been defined as follows:-

"Resignation.--- It has been said that "resignation" is a term of legal art, having legal connotations which describe certain legal results. It is characteristically the voluntary surrender of a position by the one resigning, made freely and not under duress, and the word is defined generally."

12. The arguments of the learned counsel for the petitioner that the resignation tendered by the petitioner was the result of duress and coercion. In the case in hand, there is absolutely nothing to indicate that the resignation tendered by the petitioner was the result of duress or any coercion, but seems to be voluntary. The petitioner did not withdraw his resignation prior to its acceptance. There is no provision to accept the petition at this stage in favour of the petitioner. “Duress” and “coercion” and adjudication thereof are disputed questions of fact, which cannot be resolved while exercising jurisdiction under Article 199 of the Constitution.

13. In the instant petition, disputed questions of fact have been raised, which cannot be resolved in writ jurisdiction. Whether or not the resignation was tendered out of free will or under duress cannot be adjudicated while exercising jurisdiction under Article 199 of the Constitution. It is settled law that disputed questions of fact cannot be determined while exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. Reliance is placed on the cases of *“Dr. M. A. Haseeb Khan etc v. Sikandar Shaheen and 9 others”* [PLD 1980 SC 139], *“Ghulam Muhammad and another v. Mst. Noor Bibi and 5 others”*, [1980 SCMR 933], *“Khawaja Muhammad Akhtar v. President, Cantonment Board, Sialkot Cantt Election Authority (Tribunal) and another* [1981 SCMR 291], *“Benedict F.D’ Souza v. Karachi Building Control Authority & 3 others”*, [1989 SCMR 918], *“Federation Of Pakistan and 2 others v. Major (Retd.) Muhammad Sabir Khan”*, [PLD 1991 SC 476], *“Muhammad Younis Khan and 12 others v. Government of N.W.F.P. through Secretary, Forest and Agriculture, Peshawar and others”* [1993 SCMR 618], *‘Shah Wali and other v. Ferozuddin and others’* [2000 SCMR 718], *‘Collector of Customs and others v. Messrs Fatima Enterprises Ltd. and others’* [2012 SCMR 416], and *‘Sher Afgan Khan Niaz v. Ali S. Habib and others’* [2011 SCMR 1813].

14. After considering the facts and circumstances of the case in the light of guidelines rendered by the august Supreme Court, this

court is of the view that the petition has no force and same is hereby dismissed accordingly.

(Ghulam Azam Qambrani)
Judge

Announced in Open Court, on this 22nd day of October, 2020.

Judge

"Approved for reporting."

S.Akhtar

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