

2011 M L D 1494

[Lahore]

Before Muhammad Ameer Bhatti, J

Mst. MISBAH FATIMA---Petitioner

Versus

PROVINCE OF PUNJAB through Secretary and 4 others---Respondents

Writ Petition No.11633 of 2010, decided on 7th June, 2011.

(a) Locus poenitentiae, principle of---

---Illegal order---Validity---Perpetual rights could not be claimed on basis of an illegal order--
-Principle of locus poenitentiae could be invoked in respect of an order being illegal or
contrary to or in contravention of any provision of law.

(b) Constitution of Pakistan---

---Art. 199--General Clauses Act (X of 1897), Ss. 24 & 24-A---Constitutional petition---Civil
Service---Appointment of Educator in Education Department---Withdrawal of appointment
order without issuing show-cause, notice or providing opportunity of hearing to petitioner after
having served for about eleven (11) months efficiently and diligently---Validity---Appointment
order of petitioner was neither illegal nor contrary to any provision of law nor issued by an
incompetent authority---Competent authority had passed appointment order after scrutiny of
documents---Respondent had no authority to withdraw such appointment order without any
justification---Respondent did not allege that petitioner had obtained appointment order by
committing fraud or misrepresentation---Respondent had no locus poenitentiae to recall such
order after same having been implemented---Petitioner had secured a vested right, which could
not be taken away or withdrawn by authority without providing her an opportunity of hearing--
-High Court declared impugned order to be illegal and without lawful authority.

Mrs. Anisa Rehman v. PIAC and others 1994 SCMR 2232 rel.

(c) Public functionaries---

---Duty of public functionaries to perform their duties within parameters prescribed by law.

(d) Administration of justice---

---When law requires a thing to be done in a particular manner, then same should be done in
such manner or the same should not be done at all---Principles.

PLD 2005 Kar. 128 and 2007 PSC 281 rel.

Sh. Usman Karimud Din for Petitioner.

Siddique Ahmad for Respondent No.5.

Firdous Butt, A.A.-G.

Muzaffarul Haq, Litigation Officer o/o EDO (EDU) Faisalabad.

Rana M. Younas Aziz, Law Officer Punjab School Education.

Ms. Rukhsana Nighat, Headmistress.

ORDER

MUHAMMAD AMEER BHATTI, J.--This writ petition is directed against the order dated 27-5-2010 passed by respondent No.3 whereby he has withdrawn the appointment letter of the petitioner.

2. The brief facts of the case are that the petitioner was appointed as Educator SSE(S) on contract basis vide letter dated 7-7-2009. She joined her services on 16-9-2009. She was performing her duties vet) efficiently and diligently but all of a sudden she received the impugned letter dated 27-5-2010. Hence this writ petition.

3. This writ petition came up for hearing before this Court on 1-6-2010 and this court issued the direction to the respondents for filing their report and parawise comments within a fortnight. On C.M.No.1 of 2010 subject to notice in the meanwhile if the petitioner has not relinquished the charge, she shall continue her duties. Since then the matter is pending and today is fixed for final arguments.

4. Learned counsel for the petitioner contends that the impugned order is no order in the eye of law as it does not have any reasons which are necessary and mandatory for passing any order according to section 24-A of the General Clauses Act. Further contends that the respondent No.4 has no locus poenitentiae to withdraw the order of appointment which has already been implemented in accordance with law. Further contends that neither any show cause notice was issued nor any opportunity of hearing was provided which is clear violation of the fundamental rights and the principle of natural justice, hence the order is nullity being violative of principle of audi alteram partem. Lastly contends that the impugned order is violative of the rights of the petitioner as guaranteed and protected under Articles 4, 9 and 25 of the Constitution of Islamic Republic of Pakistan, 1973.

5. It is no doubt settled law that the order which was illegal then perpetual right could not be gained on the basis of such an illegal order and Locus Poenitentiae can be invoked only

in respect of an order, which is illegal and in respect of an order which is contrary to and in contravention of any provision of law but here the appointment letter is neither illegal nor it has been issued by an incompetent authority nor it is contrary to any provision of law, hence from every legal angle, it is valid one, hence the respondent No.4 has no authority to withdraw it without any justification. It is also not the case of the respondent that the petitioner has obtained the order by committing any fraud or misrepresentation. The order was passed by the competent authority after the scrutiny of the documents, hence the respondent at this stage is left with no Locus Poenitentiae to recall it when the same has already been implemented, that too, much before its withdrawal.

6. On the other hand although the respondents have filed the report and parawise comments but there is no answer of the above mentioned contentions of the petitioner.

7. Since the order impugned passed by respondent No.4 does not reflect any reason even no show-cause notice or opportunity of hearing has been provided to the petitioner, hence the same is not sustainable in the eye of law on the touchstone invariably laid down by the honourable Supreme Court. Even otherwise it has been held by the honourable Supreme Court that opportunity of hearing must have been provided before passing, any adverse order even if it has not provided in the statute for that matter I would like to rely on the following judgments of the honourable Supreme Court:--

1994 SCMR 2232 (Mrs. Anisa Rehman v. PIAC and others Art. 199---Maxim "audi alteram partem"---Applicability---Extent---Constitutional jurisdiction, exercise of---Essentials---Maxim "audi alteram partem" would be applicable to judicial as well as to non judicial proceedings and it would be read into every statute as its part if right of hearing has not been expressly provided therein---Violation of the Maxim could be equated with the violation of a provision of law warranting pressing into service constitutional jurisdiction".

8. It is the duty of the functionaries to perform their duties within the parameters prescribed by law. In this case the law provides the way for passing the order then it must be passed according to that law. It is settled law that when law requires a thing to be done in particular manner, then it should be done in that manner or it should be not done at all. Reliance has been placed on PLD 2005 Kar. 128 and 2007 PSC 281.

9. This fact can also not be ignored that the impugned order is against the principles of natural justice "audi alteram partem", especially when petitioner has secured a vested right, which could not be taken away or withdrawn by the department in a fanciful manner i.e. without providing an opportunity of hearing, without fulfilling the requirements of principles of natural justice.

10. For what has been discussed above the order impugned in the light of the above mentioned case law and the contentions of the learned counsel for the petitioner is not sustainable in the eye of law, hence I have no option except to declare it illegal and without any lawful authority. Consequently this writ petition is allowed. No order as to costs.

S.A.K./M-908/L

Petition accepted.