

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE FAISAL ARAB
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

4 AFR
- **CIVIL PETITION NO. 3952 OF 2019**
(On appeal against the judgment dated 14.09.2019
passed by the Sindh Subordinate Judiciary Service
Tribunal, Karachi)

Rizwana Altaf

... Petitioner

VERSUS

Chief Justice, High Court of Sindh through its Registrar

... Respondent

For the Petitioner: Mr. Muhammad Umair Baloch, ASC

For the Respondent: N.R.

Date of Hearing: 09.06.2020

JUDGMENT

FAISAL ARAB, J.- Petitioner after graduating in law got herself enrolled as an advocate of the district judiciary on 17.06.2008. At that time she had already applied for the post of primary school teacher and succeeded in getting employment with Education Department, Government of Sindh on 11.08.2008.

2. On 07.9.2015 the High Court of Sindh advertised the posts of Civil Judge & Judicial Magistrate for which the petitioner applied. Though in government service holding the post of school teacher, the petitioner preferred not to apply through the proper channel and kept items Nos.13 and 14 of the application form blank which required her to disclose the department she was serving or had served, the date of induction in service and the designation she was holding and if she has been terminated from service, the date of such termination. On 02.06.2016 she was appointed as Civil Judge & Judicial Magistrate. She reported for duty on 28.06.2016 thereafter she was sent for judicial training.

3. After becoming judge on 02.06.2016, the petitioner's name continued to be on the payroll of serving primary school teachers of the Education Department, Government of Sindh and in such capacity received salary of such post for sometime. When these facts were brought to the notice of the then Chief Justice of the Sindh High Court, proceedings under Rule 9(2) of the Sindh Judicial Service Rules, 1994 were initiated which empowers him to dispense the services of a judge during his or her probationary period. In such proceedings, it transpired that she was not possessing active license to practice as an advocate right from the date when she was appointed as school teacher on 17.06.2008 till her appointment on 02.09.2016 as Civil Judge & Judicial Magistrate. What came out from such proceedings was that she applied for the post of Civil Judge & Judicial Magistrate solely on the basis that she is a practicing advocate by concealing the fact that she was a government servant holding a permanent post of primary school teacher right from 11.08.2008 till becoming Civil Judge on 02.06.2016.

4. The record further reflects that the petitioner continued to draw monthly salary as school teacher for the months of June and July after becoming a judge on 02.06.2016 and her name continued to be on the payroll of the Education Department, Government of Sindh till 02.09.2016. In this background the Chief Justice formed the opinion that she cannot be expected to perform her duties honestly and uprightly and her retention in judicial service will be against the public interest. Resultantly her services were dispensed under Rule 9(2) of the Sindh Judicial Service Rules, 1994 while she was in her probationary period. The petitioner preferred appeal before the Sindh Subordinate Judiciary Service Tribunal comprised of two judges of the High Court of Sindh which was dismissed. Hence this petition.

5. Learned counsel for the petitioner contended that the petitioner applied to the Education Department, Government of Sindh for grant of NOC in order to apply for the post of Civil Judge & Judicial Magistrate but when it was not issued she did not mention this fact in her application form. He further contended that the petitioner being civil servant working in the Education Department,

Government of Sindh as a school teacher was otherwise entitled to be considered for appointment even if she had not practiced as an advocate. He further contended that removal of the petitioner without conducting regular inquiry was itself sufficient reason for restoring the petitioner back in service even if she was in her probationary period of service. In support of his contentions, he relied on the past decisions of the Tribunal in which the government servants, who had not applied through proper channel and had been serving as school teachers, were appointed as Civil Judges & Judicial Magistrates and such omission was not made basis for their removal from service.

6. We have examined the application of the petitioner submitted while applying for the post of Civil Judge & Judicial Magistrate. She disclosed that she was enrolled as an advocate of district judiciary on 17.06.2008 and as advocate of the High Court on 15.12.2010 without disclosing the fact that she was a government servant holding the post of primary school teacher thereby represented herself to be a practicing advocate only. Under item No. 13 of the application form she was required to disclose the name of the department, her designation and the date of her employment in service but she left item No.13 blank. Under item No. 14 of the application form she was also required to disclose the date of her induction in previous service and if terminated when and with what reasons were to be disclosed. The disclosure of such information is not meaningless. If a person is in or was in government service and has chosen to take another government service then such information becomes necessary for background check but she deliberately withheld such information by keeping items No. 13 and 14 of the application form blank. Resultantly, background check with regard to her past service could not be conducted by the concerned authorities of the government of Sindh before appointing her as a Civil Judge & Judicial Magistrate. It was only when she drew salary as school teacher for the months when she was also entitled to draw salary of the post of Civil Judge that the factum of her previous employment came to light.

7. In order to get enrolled as an advocate of the High Court one has to be a practicing advocate of the district judiciary for a

period of at-least two years which is a requirement of the Legal Practitioners and Bar Councils Act, 1973. The petitioner's own record reflects that she joined Education Department as Primary School Teacher on 11.08.2008 and while continued to hold such post got herself enrolled as advocate of the High Court on 15.12.2010. This shows that she got herself enrolled by representing herself to be a practicing advocate for at least two years though she only had a standing of about two months i.e. from 17.06.2008 to 11.08.2008, the period which she can lawfully claim to be a practicing advocate prior to becoming a fulltime school teacher. This shows another misrepresentation on her part. The petitioner either never practiced as an advocate of the subordinate courts for a period of two years or if she had then she did not serve the education department as primary school teacher and yet continued to draw salary of such post. In this background she appears to have deliberately concealed the factum of her employment with Education Department in order to get enrolled as an advocate of High Court on false representation.

8. Even while applying for the post of Civil Judge & Judicial magistrate, the petitioner neither disclosed to the High Court that she was in the service of Education Department nor she disclosed to the Education department that she needs NOC for applying for the post of Civil Judge & Judicial Magistrate. The only reason which the petitioner disclosed in her resignation tendered to the Education Department was her domestic engagement. From the contents of her application tendered in the High Court for seeking employment as Civil Judge & Judicial Magistrate, it is apparent that she represented that she is a practicing advocate which fact does not reconcile with her occupation as a fulltime Primary School Teacher of the Education Department right from 11.08.2008 to 02.06.2016. Now in these proceedings she has taken the stance that being a civil servant she was otherwise eligible to be employed as a judge in the district judiciary which fact she deliberately concealed in her application though it was specifically asked to be disclosed. The facts reflected from the record made available by the petitioner herself were sufficient to dispense her services by invoking Rule 9(2) of the Sindh Judicial Service Rules, 1994, as such a person cannot be given the important post of a judge when the basis of seeking enrolment as

High Court advocate as well as appointment as Civil Judge & Judicial Magistrate was tainted with concealment and misrepresentation.

9. The fact that in the past some irregularities in the appointment of some other civil judges have taken place in the past would obviously not be made basis to invoke the principle of discrimination. When the record reflects that the services of a probationer could be dispensed with on the basis of undeniable material then no inquiry is required to be conducted. When there is some sound reason in the mind of the competent authority that an employee who is serving in his or her probationary period is not suitable to be given permanent employment and his or her services need to be dispensed with then it matters not if the competent authority expresses such reason without conducting a regular inquiry. We feel there was sufficient material before the Chief Justice of the Sindh High Court to adopt such a course. In any case any reason expressed against a probationer at the time of dispensing his or her service without regular inquiry does not prevent him or her to seek employment elsewhere.

10. For what has been discussed above, we do not find any reason to interfere in the impugned judgment. This petition having no merit is accordingly dismissed and leave is refused.

Islamabad, the
9th of June, 2020
Approved For Reporting
Khurram