

Stereo. H C J D A-38
JUDGMENT SHEET
IN THE PUNJAB SUBORDINATE JUDICIARY
SERVICE TRIBUNAL LAHORE
JUDICIAL DEPARTMENT

Service Appeal No.06 of 2022

Dr. Syed Ali Sana Bokhari
Versus
Chief Justice and Judges of the Lahore High Court /
Authority through the Registrar, Lahore High Court, Lahore

J U D G M E N T

Date of hearing: 14.03.2025.
Appellant by: M/s. Taffazul Haider Rizvi, Haider Ali Khan and Beenish Sikander, Advocates.
Respondent by: Mr. Zubda-tul-Hussain, Advocate.

MUHAMMAD SAJID MEHMOOD SETHI, J./CHAIRMAN:-

Through instant appeal, appellant has assailed vires of order dated 22.01.2022, passed by the respondent, whereby appellant's request for reinstatement in service w.e.f. the date of dismissal; retirement w.e.f. the date of superannuation with all back benefits including promotions; and release of pension, was rejected.

2. Succinctly, the facts of the case are that appellant was appointed as Civil Judge in the year 1978. In the year 1991, while being posted in the Lahore High Court, Lahore as Incharge of the newly created Computer Cell, appellant was issued a charge sheet on 25.11.1991 containing allegations of misconduct, inefficiency and non-performance of duties. However, the disciplinary proceedings against the appellant were ultimately dropped. But, those were followed by initiation of *suo moto* contempt proceedings against the appellant, which were culminated in conviction of the appellant by the learned Single Judge vide judgment dated 28.11.1993 (announced in open Court on 08.12.1993). Feeling discontent, appellant filed **Crl. Appeal No.764 of 1993** before the Hon'ble Division Bench of this Court, which was dismissed vide judgment dated 03.06.2000

(announced in open Court on 28.06.2000), which was further challenged before the Hon'ble Supreme Court of Pakistan by way of filing **Crl. Appeal No.261 of 2000**, which was also dismissed vide judgment dated 05.10.2000 (announced in open Court on 06.12.2000). Nevertheless, the sentence awarded to the appellant was reduced to one month S.I., with the same amount of fine along with one month S.I. in case of default of its payment. In consequence to his conviction and sentence, the appellant was dismissed from service vide notification dated 28.09.2001. The appellant filed departmental appeal followed by Service Appeal before this Tribunal, however, during the pendency of said appeal, appellant reached the age of superannuation on 01.04.2004. Through judgment dated 20.06.2004, said service appeal was decided 20.06.2014 in the manner that order of dismissal from service was set aside and matter was remanded for decision afresh after affording an opportunity of hearing to the appellant. Both the parties assailed the aforesaid judgment by way of filing **Civil Petition No.333-L of 2015 & Civil Petition No.532-L of 2015** before the Hon'ble Supreme Court, which were disposed of vide judgment dated 18.05.2020 while upholding the said judgment dated 20.06.2014. In post-remand proceedings, the appellant was granted hearing before the Administrative Committee followed by issuance of notification dated 05.05.2021, whereby the disciplinary proceedings against appellant were abated on the ground that he had already been superannuated. Afterwards, the appellant, through letter dated 24.05.2021, approached the Registrar for the release of his pension and other service benefits. However, the request was rejected vide notification dated 22.01.2022. Hence, instant Service Appeal.

3. Learned counsel for the appellant submits that once disciplinary proceedings were abated by the competent authority due to superannuation of the appellant, he stood retired after attaining the age of superannuation. He argues that

appellant is required to be treated like all other superannuated civil servants, as such it is his fundamental right that his pension and all back benefits including promotions, earned during service, are awarded to him. He maintains that appellant has been discriminated in terms of the Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973 as other judicial officers who stood retired after abatement of disciplinary proceedings were also awarded pension and all other back benefits. He adds that impugned order, being absolutely non-speaking, is unsustainable in the eyes of law. In support, he has placed reliance upon Haji Muhammad Ismail Memon Advocate Complainant's case (PLD 2007 Supreme Court 35), Muhammad Zaheer Khan v. Government of Pakistan through Secretary, Establishment and others (2010 SCMR 1554) and Pakistan Telecommunication Employees Trust (PTET) through M.D., Islamabad and others v. Muhammad Arif and others (2015 SCMR 1472).

4. Conversely, learned counsel for respondent-authority defends the impugned order.

5. Arguments heard. Available record perused.

6. Record shows that pursuant to the contempt proceedings, the appellant was convicted and sentenced to one month S.I., a fine of Rs.5000/- & in default of fine, further S.I. for one month, as per decision of the Hon'ble Apex Court. The appellant was then dismissed from service vide notification dated 28.09.2001, however, by virtue of judgment dated 20.06.2014, passed by this Tribunal, notification qua his dismissal from service was set aside and matter was remanded for decision afresh after affording an opportunity of hearing to him, which was upheld by the Hon'ble Supreme Court vide judgment dated 18.05.2020, with specific observations qua the element of 'moral turpitude', which are reproduced as under:-

"4. Having considered the submission by the learned counsel for the parties, we note that the impugned

judgment requires that a jurisdictional fact for imposing penalty upon the petitioner in disciplinary proceedings be determined by the competent authority. That adjudication would settle if the conviction for contempt of court by a judicial officer involves the misdemeanor of moral turpitude for the purposes of disciplinary action. Without determination of the said elemental point, the superstructure of a service penalty erected on the said conviction, is doubtful and weak. Presently, we notice that six years have passed after the impugned judgment solely because the same is also challenged in a counter petition No.532-L of 2015 filed by the competent authority. That petition does not cite any legal authority for claiming that a conviction for contempt of court is tantamount to commission of moral turpitude. The equation can be drawn on the basis of the law after hearing the parties. Consequently we consider that the direction given in impugned judgment has merit. It would be appreciated if the competent authority took up the matter for early consideration and decided the same within a period of three months. With these observations both the petitions are disposed off.”

In post-remand proceedings, the respondent-authority issued notification dated 05.05.2021 qua abatement of the disciplinary proceedings, which reads as under:-

“In view of the instructions issued by Government of the Punjab, Services & General Administration Department, Lahore through Circulation No.SORI(S&GAD)4-32/2004, dated 29.09.2004, the Hon’ble Chief Justice and Judges are pleased to abate the disciplinary proceedings against Dr. Syed Ali Sana Bokhari, ex-Civil Judge having already crossed the age of superannuation.”

It is obvious from the above that no adverse order existed against the appellant as order of his dismissal from service had already been set aside and the disciplinary proceedings to determine the question of ‘moral turpitude’ were also abated by the competent authority as noted above when during the course of proceedings, the appellant reached the age of superannuation on 01.04.2004. Therefore, the respondent-authority was obligated to pass the further order by notionally permitting the appellant to retire from service on date he had attained the age of superannuation i.e. 01.04.2004 besides considering to release the retiral benefits to him, treating the disciplinary

proceedings abated as if no punishment was ever awarded to the appellant. Even otherwise, in terms of office memorandum dated 26.02.1976, it was incumbent upon the respondent-authority to notify the retirement of its officers to all concerned for recovery of dues from them, if any, and to facilitate the payment of pension and other dues to them.

7. It is settled law that an employee cannot be penalized for any action, which was subject-matter of an inquiry that was not completed before his superannuation/retirement. Upon reaching the age of superannuation, the unfinished disciplinary proceedings automatically cease to have effect by operation of law. This legal extinction of proceedings vests in the civil servant an indefeasible right to receive their full complement of pensionary benefits without deduction or diminution. The Superior Courts of the country has consistently upheld this principle as a fundamental safeguard against the perpetual pendency of disciplinary action, recognizing that the retirement creates a vested right that cannot be retroactively disturbed by inconclusive inquiries. In Province of Punjab through Conservator of Forest, Faisalabad and others v. Javed Iqbal (2021 SCMR 328), the Supreme Court by alluding to Rule 54-A of the Fundamental Rules and Muhammad Zaheer Khan v. Government of Pakistan through Secretary, Establishment and others [2010 PLC (C.S.) 559], reaffirmed the aforementioned principle in the following words:-

“9. It is also important to highlight that closure of departmental proceedings after retirement of an employee under the Act is not a new concept and finds historical support and reference in Fundamental Rules (FR), the Civil Service Regulations (CSR), Punjab Civil Service Pension Rules, 1955 and Civil Establishment Code (ESTA CODE) in the following manner:

FR 54-A states:

54A. If a Government servant, who has been suspended pending inquiry into his conduct attains the age of superannuation before the completion of inquiry, the disciplinary proceedings against him shall abate and such government servant shall retire with full pensionary benefits and the period of suspension shall be treated as period spent on duty.

This Court in Muhammed Zaheer Khan held that the plain reading of F.R.54-A is clear that the disciplinary proceedings against an officer abate if the latter attains the age of superannuation. The Rule entitles such officer to retire with full pensionary benefits and period of suspension is bound to be treated as period spent on duty. It was held that the fundamental principle laid down in FR.54-A postulates that the case of the appellant cannot be remanded to the authority for holding de novo proceedings, after eleven years of his superannuation. **(footnote omitted)**

In this regard, reference could also be made to Muhammad Anwar Bajwa, Executive Director, Agricultural Development Bank of Pakistan, 1-Faisal Avenue, Zero Point, Islamabad v. Chairman, Agricultural Development Bank of Pakistan, Faisal Avenue, Zero Point, Islamabad [2001 PLC (C.S.) 336], Bilquis Nargis v. Secretary to Government of the Punjab, Education Department [1983 PLC (C.S.) 1141], Syed Abdus Salam Kazmi v. Managing Director WASA, Multan and another [2005 PLC (C.S.) 244] and Haji Muhammad Ismail Memon Advocate Complainant's case (PLD 2007 Supreme Court 35).

8. The appellant had served the Judiciary for a period of about 23-years. So in all fairness, when the pending disciplinary proceedings were abated and dismissal order was no more in the field, there was no justification in halting the retirement notification in favour of the appellant and withholding the payable pensionary benefits to him; therefore, the inaction on the part of respondent-authority in this regard appears to be totally unjustified and unwarranted. In this regard, reliance could be placed upon Muhammad Yousaf v. Province of Sindh and others (2024 SCMR 1689), wherein it has been held that the pension is a vested right and not charity, alms or donation by the employer but a compensation of services rendered assiduously by giving blood, sweat, toil and tears.

9. In somewhat similar circumstances, Mr. Muhsin Tirmizey, the then District & Sessions Judge, Dera Ghazi Khan, was sentenced to imprisonment till the rising of the Court and a fine of Rs.2,000/- in judgment reported as The

State v. Musin Tirmizey (PLD 1964 (W.P.) Lahore 434), however, after conviction, he continued to serve as District & Sessions Judge and retired with full pensionary benefits.

In India, the Supreme Court has consistently held that pension is not a bounty, charity, or gratuitous payment dependent on the employer's discretion, but rather a vested legal right of the employee that constitutes deferred compensation for the services rendered in the past and it is a property to which retired employees are legally entitled. The Court ruled that pension was a right and the payment of it depended upon the discretion of the Government but was governed by the rules and a Government servant coming within those rules was entitled to claim pension. Reference can be made to Deokinandan Prasad v. State Of Bihar & Ors [AIR 1971 SC 1409], State Of Punjab v. K. R. Erry & Sobhag Rai Mehta [1973 SCR (2) 405], D.S. Nakara & Others v. Union of India [1983 SCR (2) 165] and All India Reserve Bank Retired Officers v. Union of India And Others (AIR 1992 SC 767).

10. Resultantly, instant appeal is allowed, consequently the impugned order dated 22.01.2022 is set aside being illegal and without lawful authority. The respondent-authority is directed to issue retirement notification of appellant and release the retiral benefits in favour of appellant.

(Muhammad Sajid Mehmood Sethi)
Chairman

(Abid Husain Chattha)
Member

(Rasaal Hasan Syed)
Member

APPROVED FOR REPORTING

Chairman

Member

Member