

JUDGMENT SHEET
IN THE PUNJAB SUBORDINATE JUDICIARY
SERVICE TRIBUNAL LAHORE
JUDICIAL DEPARTMENT

Service Appeal No.15 of 2015

Mian Shahid Mehmood-II
Versus
The Registrar, Lahore High Court, Lahore

JUDGMENT

Date of hearing: 22.06.2023.
Appellants by: M/s Hafiz Tariq Naseem, Talaat Farooq Shaikh, Syed Ijaz Qutub and Abdul Haseeb Sheikh, Advocates.
Mian Shahid Mehmood-II, Muhammad Riaz Chopra, Anwar Ali and Pervaiz Inayat Malik, appellants in person.
Respondents by: M/s Zubta-tul-Hassan, Zawar Ahmad Sheikh and Ishfaq Qayyum Cheema, Advocates.

MUHAMMAD SAJID MEHMOOD SETHI, J. / MEMBER:- This consolidated judgment shall decide instant appeal along with following connected appeals as common questions of law and facts are involved in these cases, however are bifurcated into Category “A” (appeals challenging retirement order passed under section 12 of the Punjab Civil Servants Act, 1974) and Category “B” (appeals seeking expunction of adverse remarks in the PERs):-

CATEGORY “A”

Service Appeals No.16, 22, 24, 26, 27, 28, 29 & 30 of 2015.

CATEGORY “B”

Service Appeals No.10, 11, 12, 13, 14, 15, 16, 17, 18, 21, 23, 24 & 25 of 2016.

2. Through these appeals, appellants have assailed vires of the show cause notices and subsequent notification dated 02.06.2015, issued by the respondent / Registrar, Lahore High Court, Lahore, whereby appellants were retired from service under Section 12 of

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the Punjab Civil Servants Act, 1974 (“**the Act of 1974**”). Appellants have also assailed orders dated 05.09.2016 dismissing their representations against adverse remarks appearing in their respective PERs and sought expunction of the adverse remarks.

3. Learned counsel for appellants submits that the adverse remarks in the Performance Evaluation Reports (“**PERs**”) of the appellants stood ignored in view of the decision of the Administration Committee dated 30.06.1997 as the appellants afterwards earned satisfactory reports. He further submits that appellants have been compulsorily retired from service without adopting the due process of law. He adds that compulsory retirement is a major penalty as defined under Section 4(b)(iv) of the Punjab Employees Efficiency, Discipline and Accountability Act (“**PEEDA Act**”), 2006. He maintains that Section 12(1)(i) of the Act of 1974 is inconsistent with the fundamental rights of the appellants as after insertion of Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 (“**the Constitution**”) through 18th amendment, right of fair trial has been provided to all the citizens of Pakistan, however, unfortunately, neither any charge has been framed nor any regular inquiry has been conducted in the matter before passing the impugned adverse order. He argues that in view of guidelines provided in the Punjab Civil Servants (Directory Retirement from Service) Rules, 2021 (“**the Directory Rules of 2021**”), impugned orders are unsustainable in the eye of law. While referring to Explanation to Section 12 of the Act of 1974, learned counsel submits that the appointing authority for civil servants in Grade-19 and above is the Chief Minister and the Hon’ble Chief Justice and Judges have not been designated as ‘appointing authority’ to take action in terms of section 12(1)(i) of the Act of 1974. Appellant-Anwar Ali in Service Appeal No.27 of 2015 contends that he had not possessed requisite service of twenty years at the time of issuance of impugned Notification, thus the same is unsustainable in the eye of law. In support, he has referred to Atta Rabbani v. Secretary Education, Government of the Punjab, Lahore and 3 others (2006 SCMR 978), Muhammad Afzal

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v. Regional Police Officer, Bahawalpur and others (2011 SCMR 1327), Muhammad Afzal v. Regional Police Officer, Bahawalpur and others [2012 PLC (C.S.) 728], Muhammad Sharif Abbasi v. Member Water, WAPDA, Lahore and others (2013 SCMR 903), Muhammad Shoaib Ahmed v. The Controller General of Accounts, Islamabad (2020 SCMR 1018), Member (Administration), Federal Board of Revenue and others v. Mian Khan (2021 SCMR 1077), Muhammad Sharif v. Inspector General of Police, Punjab, Lahore and another [2016 PLC (C.S.) 1083], Zia-ul-Qamar v. The Registrar, Lahore High Court Lahore [2017 PLC (C.S.) Note 64], Sheikh Shahid Rafiq v. The Registrar, Lahore High Court, Lahore through Registrar [2018 PLC (C.S.) 1092], Syed Asghar Shah v. The Registrar, Peshawar High Court, Peshawar [2020 PLC (C.S.) 454], Abdul Hakeem Hashmi and others v. Peshawar High Court, Peshawar through Registrar and others [2020 PLC (C.S.) 1100], Government of the Punjab and others v. Syed Muhammad Saleem Shah [2020 PLC (C.S.) 593] and Syed Asghar Shah, AD&SJ v. Peshawar High Court, Peshawar through Registrar [2020 PLC (C.S.) 1254].

4. Conversely, learned Legal Advisor for respondent defends the impugned show cause notice as well as impugned order by contending that direction made under Section 12(1)(i) of the Act of 1974 is not a punishment within the Punjab Civil Servants (Efficiency & Discipline) Rules, 1999 (“**the E&D Rules, 1999**”) and such order is not ordinarily interfered with if the requirements of “public interest” are satisfied. He adds that procedure and nature of action for exercise of powers under the said provision of law is entirely independent of the action anticipated by the E&D Rules, 1999.

5. Arguments heard. Available record perused.

6. The primary question for determination by this Tribunal is that whether mandatory requirements for invocation of provisions of Section 12 of the Act of 1974, have been fulfilled by the competent authority while passing the impugned order /

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Notification. The aforesaid provision is reproduced hereunder for ease of reference:-

"12. Retirement from service.- (1) Civil Servant shall retire from service-

- (i) on such date after he has completed twenty years of service qualifying for pension or other retirement benefits as the competent authority may, in public interest, direct; or
- (ii) where no direction is given under clause (i):
- (a) on completion of the sixtieth year of his age; or
- (b) voluntarily, on completion of twenty five years of service or on attaining fifty five years of age, whichever is later.

(2) No direction under clause (i) of sub-section (1) shall be made until the Civil Servant has been informed in writing of the grounds on which it is proposed to make the direction and has been given a reasonable opportunity of showing cause against the said direction."

7. It reflects from afore-referred provision that the pre-requisites i.e. (i) civil servant must have completed twenty years of service at his credit for pension or other retirement benefits; (ii) direction of retirement of civil servant must be in public interest; (iii) civil servant must be informed of the grounds of such direction; and (iv) civil servant must be provided reasonable opportunity of showing cause against the proposed direction, must co-exist for invoking said provision. The legislature has taken care of incorporating all legal and constitutional safeguards in afore-referred provision so as to ensure that the civil servant could be safe and secure from any unilateral, mala fide and unlawful retrenchment.

8. In these cases, proper show cause notices with reference to applicable provisions of law and case law with full detail of allegations, pending complaints and remarks in PERs were served upon the appellants to which they furnished their respective written replies. The element of *public interest* has also been rightly evaluated by the competent authority keeping in view the service record of appellants and nothing contrary has been presented before us. The order of retirement has been passed after due process of law and fulfilling the pre-requisites to invoke section 12 of the Act of 1974.

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9. The record transpires that all the appellants had completed the requisite twenty years' service. The expression *public interest* implies a matter relating to the people at large, nation or a community as a whole and if the interest of general public or community is not involved in a matter, it cannot be brought within the purview of *public interest*. The requirement of *public interest* may vary from case to case, however an order passed by the competent authority under section 12(1)(i) of the Act of 1974 must have reasonable nexus with the *public interest*. The assessment of the performance of a civil servant to judge his suitability must not be based on the personal reasons or considerations not related to the public interest. Ordinarily, Tribunal or Court is not supposed to substitute reasons for public interest and order under Section 12 is not interfered with as satisfaction of the competent authority regarding efficiency and performance of an employee is not to be substituted by the Court or Tribunal with its own opinion on the basis of analysis of the record. The justiciability of Section 12 is restricted to the fulfilment of necessary conditions contained therein. Reliance is placed upon Muhammad Qadeer and 2 others v. Secretary, Defence Production Division, Government of Pakistan and others (2003 SCMR 1804), Chairman, Central Board of Film Censors, Islamabad and another v. S. Muhammad Ali Shah [2004 PLC (C.S.) 707], Atta Rabbani v. Secretary Education, Government of the Punjab, Lahore and 3 others (2006 SCMR 978) and Atta Rabbani v. Secretary Education, Government Of The Punjab, Lahore and 3 others [2007 P L C (C.S.) 608],

10. Needless to observe that the object of section 12 is to develop efficiency and discipline and achieve good governance in the civil service. A civil servant who has served a considerable length of twenty years with a minimum level of efficiency loses legitimate expectancy to perform better in future and only want to stay with the sort of performance, which may be in his / her interest, but certainly not in the interest of public. We are mindful of the fact that there is basic difference between retirement under section 12(i) of the Act of 1974 and Section 4(b)(ii) of

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Government Servants (Efficiency and Discipline) Rules, 1973, as retirement in terms of former provision is not a punishment and civil servant get all service benefits without any stigma whereas compulsory retirement under latter provision is a punishment.

11. Regarding application of the Punjab Civil Servants (Directory Retirement from Service) Rules, 2021 (“**the Directory Rules of 2021**”), to the cases in hand, it is observed that these Rules were introduced through notification No. SOR-I(S&GAD)4-11/2020 dated 16.02.2021. As per the general rules of interpretation, these Rules would have a prospective effect for the reason that no expressed provision to the contrary is available therein. Consequently, the cases already pending and decided before enactment of aforesaid Rules would remain unaffected by the new legislation. It is observed with emphasis that statutes, notifications, executive and administrative orders operate prospectively unless retrospective operation was expressly provided therein. Notification which is duly published in the official gazette takes effect from the date on which it was published except otherwise provided in the notification itself. Disciplinary proceedings once initiated against a civil servant under a specific law shall be culminated under the same law and not under the law came into existence on the same subject subsequently. Reliance is placed upon Commissioner, Sindh Employees Social Securities Institution and another v. Messrs E.M. Oil Mills and Industries Ltd., S.I.T.E., Karachi and 2 others (2002 SCMR 39), Muhammad Nawaz v. District and Sessions Judge and others (2003 SCMR 1720), Senior Member BOR and others v. Sardar Bakhsh Bhutta and another (2012 SCMR 864), Muhammad Tariq Badr and another v. National Bank of Pakistan and others (2013 SCMR 314), Controller General of Accounts v. Fazil Ahmad, DAO EC (C&W Division Hangu) and others (2021 SCMR 800) and Muhammad Faheem Zafar v. Government of the Punjab through Accountant General, Punjab and 3 others [2022 PLC (C.S.) 1156].

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12. The argument of appellants that competent authority for civil servants in Grade-19 and above, in terms of Explanation to section 12 of the Act of 1974, is the Chief Minister, thus impugned retirement order has been passed by incompetent authority is totally misconceived. The Punjab Judicial Service Rules, 1994 regulate recruitment of the Punjab Judicial Service and prescribe conditions of service. Rule 3 provides that the service shall comprise the post of:- *a) District and Sessions Judges; b) Additional District & Sessions Judges; c) Civil Judges-cum-Judicial Magistrates.* Rule 4 provides that appointments to the service shall be made by the High Court. Admittedly, appellants were appointed by the High Court, thus the competent authority to pass their retirement order in terms of section 12 of the Act of 1974 is the High Court, which is comprised of the Chief Justice and Judges.

13. The argument of appellant-Anwar Ali (Service Appeal No.27 of 2015) is that he had not secured twenty years of service (judicial service was 16 years, 04 months & 21 days), therefore, his retirement within contemplation of section 12 of the Act of 1974 could not have been made. It was brought to our notice that before entering into judicial service, said appellant had more than seven years' service at his credit in F.I.A., therefore, as per Rule 2.1 of the Punjab Civil Servants Pension Rules, 1955, the said period of service shall be added into twenty years of qualifying service for pension as contemplated under section 12(i) of the Act of 1974.

14. So far as vires of Section 12 of the Act of 1974 is concerned, the Hon'ble Supreme Court in the case reported as *Muhammad Qadeer and 2 others v. Secretary, Defence Production Division, Government of Pakistan and others (2003 SCMR 1804)*, observed that present section 13 of the Civil Servants Act, 1973 was in line with the principles laid down by the Shariat Appellate Bench of Supreme Court in case reported as *Pakistan and others v. Public at Large and others (PLD 1987 SC 304)*, thus, validity and proprietary of section 13 was not disputed. Undeniably, section 12

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of the Act of 1974 is *pari materia* to section 13 of the Civil Servants Act, 1973, therefore it is *intra vires* the Constitution.

15. In view of the above, instant appeal and connected appeals in Category “A”, challenging Notification dated 02.06.2015 regarding retirement under section 12 of the Act of 1974 are **dismissed** and consequently the appeals in Category “B” having become infructuous are **disposed of accordingly**.

(Mirza Viqas Rauf) (Muhammad Sajid Mehmood Sethi)
Chairman Member

Announced in open Court on 21.07.2023.

Chairman Member

APPROVED FOR REPORTING

Chairman Member

A.H.S./Sultan