

Stereo.HCJDA 38.
Judgment Sheet
LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT

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WRIT PETITION NO.1465 of 2023

ZEESHAN ASGHAR

versus

PROVINCE OF THE PUNJAB and others

JUDGMENT

Date of hearing: **10.10.2024**

Petitioner by: Malik Muhammad Awais Khalid,
Advocate.

Respondent No.1 by: Malik Amjad Ali, Additional
Advocate General, Punjab.

Respondents No.2 to 5 by: M/s Ali Akbar Javed Naqvi and
Muhammad Mohkam Bajwa,
Advocates.

MIRZA VIQAS RAUF, J. The petitioner namely Zeeshan Asghar was appointed as Junior Clerk in the Cadet College, Hasanabdal (hereinafter referred to as “College”) on 01st September, 2004, being the son of ex-employee, who died during service. The petitioner after completion of probation period was ultimately regularized as permanent employee. The petitioner on account of enhanced qualification was later-on posted as Junior Accountant vide order dated 18th October, 2007. To dismay of the petitioner, he was served with a show cause notice dated 27th February, 2021 and was finally confronted with a penalty of “compulsory retirement from service” w.e.f. 13th March, 2021 by way of order dated 05th March, 2021. Feeling aggrieved, the petitioner preferred a departmental appeal but it was dismissed vide order dated 17th

March, 2022. This followed a review petition before respondent No.3 but that too was dismissed through order dated 08th April, 2023, which is now impugned in this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

2. In the light of the grounds, canvassed in this petition, it was admitted for regular hearing by way of order dated 27th April, 2023 and a notice was issued to the respondents, in response whereof, written statement was filed by respondents No.2 to 5, wherein it is asserted that throughout his career, the petitioner remained troublemaker and despite numerous warnings, he did not mend his ways. In written statement, the respondents have defended the infliction of major penalty upon the petitioner.

3. Learned counsel for the petitioner submitted that the show cause notice is not only lacking any legal backing but it does not specify the allegations at all. Learned counsel contended that the petitioner has been proceeded departmentally on the basis of previous record, which amounts to double jeopardy. It is argued with vehemence that though the petitioner has been inflicted with major penalty but no regular inquiry was held. Learned counsel emphasized that the proceedings culminated into imposition of major penalty are not only violative of principle of *audi alteram partem* but offends the mandate of Article 10A of the Constitution of the Islamic Republic of Pakistan, 1973. Learned counsel argued emphatically that the impugned orders are patently illegal and unlawful. In support of his contentions, learned counsel has placed reliance on SANAULLAH SANI versus SECRETARY EDUCATION SCHOOLS and others (2024 SCMR 80) and FEDERATION OF PAKISTAN through Chairman Federal Board of Revenue FBR House, Islamabad and others versus Zahid Malik (2023 SCMR 603).

4. Conversely, learned counsel representing the “College”, while defending the impugned orders, submitted that show cause notice was well-founded and prior to the show cause notice, a detailed inquiry was conducted but the petitioner has failed to rebut the

allegations against him. Learned counsel submitted that throughout his career, the petitioner remained indolent and he was issued various warnings and penalties. It is contended by learned counsel for the “College” that the petitioner is estopped by his words and conduct to file constitutional petition as he has already received certain pensionary benefits after his compulsory retirement. Placed reliance on Raja MUHAMMAD SHAHID versus The INSPECTOR GENERAL OF POLICE and others (2023 SCMR 1135).

5. Arguments heard, record perused.

6. Before delving into the merits of the case, it would be apposite to mention here that the “College” is the first Cadet College in Pakistan which was established by the Punjab Government to serve as feeder institution to the services academies. In order to establish Boards of Governors for government educational and training institutions in the Punjab for the efficient management and control thereunder, Governor of the West Pakistan was pleased to promulgate “The Punjab Government Educational and Training Institutions Ordinance, 1960 (hereinafter referred to as “Ordinance, 1960”). In terms whereof, the government created Board of Governors to exercise administrative control over the colleges and in terms of Section 3 of the “Ordinance, 1960”, the Board was designed as a body corporate. By virtue of Section 18 of the “Ordinance, 1960”, Board was vested with the power to frame regulations not inconsistent with the provisions of the Ordinance and the rules made thereunder with the approval of the government, to carry out the purpose of the Ordinance.

7. In exercise of powers conferred on it by Clause (e) of Sub-Section (2) of Section 18 of the “Ordinance, 1960”, Board of Governors was pleased to frame, with the approval of the Government of the Punjab, “Cadet College Hasanabdal (General Conditions of Service) Regulations so as to regulate the matters relating to the service of its employees. In furtherance “Cadet College, Hasanabdal Employees’ Efficiency & Discipline

Regulations (hereinafter referred to as “E & D Regulations”) were also framed. Regulation 3 deals with penalties, whereas regulation 5 prescribes procedure for inquiry in case of inefficiency, misconduct and corruption.

8. The petitioner was appointed as Junior Clerk, being the son of ex-employee of the “College”, who died during service on 08th August, 2004. The petitioner remained in service for about 17-years when he was confronted with show cause notice dated 27th February, 2021 to the following effect:-

“Subject SHOW CAUSE NOTICE

1. A detailed enquiry was recently ordered vide Office Order No 2/1754 dated 31st December 2020 to probe the reported malpractice, misuse and fuel pilferage of College Transport over the recent years. During the comprehensive enquiry process, your involvement in one way or the other and having been revealed for being in coordination & support with the former Adjutant and NCOs for almost all the malpractices (including the issues being investigated) raises certain questions.

2. Perusal of your personal file portrays an extremely poor service record, discipline issues and below par work quality which are also proved in previous inquiries. A certificate vide No. PF-1173-A indicating aberrant withdrawal / doing away with a number of warnings from your personal file for the period from your appointment in September 2004 to November 2012 also testifies your incorrigible conduct and poor performance. It didn't seem to stop there as afterward again warnings started to record in your personal file which are summarized as under:-

Ser	Date	Nomenclature
a.	28-11-2014	Warning Letter for unnecessary interaction with cadets, office order no. PF/1656.
b.	29-04-2016	Warning letter for coming to the office often late, office order no.P/F612.
c.	07-10-2016	Show Cause Notice for carelessness and lack of responsibility, office order No.PF/1456.
d.	11-10-2016	Warning in disciplinary ground, office order no.PF/1497.
e.	03-11-2016	Advice letter for ensure punctuality, office order no.PF/1621
f.	30-03-2017	Warning letter for conduct and office discipline, office order no.PF/451.
g.	09-06-2017	Show Cause Notice to involve in a number of undesirable social activities with the cadets, office orders no.PF/1004
h.	21-06-2017	Charges of inappropriate fraternization with cadet's office order no.order-II/1092.
i.	28.08.2017	Demoted to BPS-9 and will not consider to any promotion for a period of next 3 years. Office order no.PF/1380
j.	08-03-2019	Warned to be punctual in future & improve appropriate discipline, office order no.PF/469.
k.	31.12.2020	Last Warning Letter vide Letter No.PF/1748 after being recommended by the Enquiry Committee which was constituted to evaluate your efficiency, discipline and on-job behavior.

3. You are being issued this Show Cause Notice to explain in writing as to why a strict disciplinary action should not be taken against you in the light of recommendations made in the enquiry report, reported unsuitability for service at CCH and being a demoralising factor for your law-abiding fellow workers. Your written reply should reach the undersigned by 3 Mar 2021."

9. As already observed that Regulation 5 of the "E & D Regulations" provides procedure for inquiry in cases of inefficiency, misconduct and corruption. For ease of reference, same is reproduced below:-

5. Inquiry Procedure in cases of Inefficiency, Misconduct & Corruption:-
 - a) When a college employee is to be proceeded against under Clause (a), (b) or (c) of regulation 2, the procedure in the following sub-regulations shall be observed.
 - b) The authority may, if he thinks fit, appoint an officer of the college to which the college employee belongs to examine and report on the allegation against him to enable the authority to decide whether a formal inquiry should be held.
 - c) If the authority decides that a formal inquiry should be held it shall decide further whether the allegations, if established, would call for a minor or a major penalty.
 - d)
 - i) In cases calling for a minor penalty, the authority or such officer as may be appointed by it in that behalf, shall frame a charge and in making it known to the accused shall call upon him to answer it within a specified time, which shall not be less than seven days nor more than fourteen days, and to state, together with his answer, whether he desires to be heard in person or to lead evidence in defence.
 - ii) On receiving the answer, the authority, or the said officer, shall, if satisfied that there is a prima facie case and if the alleged accused has so desired, give him the opportunity to be heard in person and to lead evidence in defence, provided that the authority or the said officer, may, for reasons to be recorded, refuse to call a particular witness or to summon or admit particular evidence.
 - iii) If the alleged accused to answer within the specified time or having answered fails to appear or absent himself from the proceedings, the authority or the said officer may proceed with the inquiry and record findings.
 - e)
 - i) In cases calling for a major penalty the authority having power to impose the penalty shall frame a charge, communicate it to the accused together with a statement of the allegation on which it is based and of any other circumstances which the authority proposes to take into consideration when passing orders on the case.
 - ii) The authority shall require the alleged accused, within a reasonable time, which shall not be less than seven days nor more than fourteen days, from the day the charge has been communicated to him, to put in a written defence, stating at the same time whether he desires to be heard in person.

- iii) If the accused so desires, or if the authority concerned so directs, an Inquiry Officer to be appointed under regulation-7 shall hold an oral inquiry at which oral evidence shall be heard as to such of the allegations as are not admitted, and the accused shall be entitled to cross examine the witness against him, to give evidence in person and to have such witnesses called for the defence as he may wish, provided that the Inquiry Officer may for reasons to be recorded in writing refuse to call a particular witness or to summon or admit particular evidence.
 - iv) The proceedings shall contain a sufficient record of the evidence and the Inquiry Officer's report to his findings and the grounds thereof.
 - v) When the authority, having considered the report, has arrived at a provisional conclusion as to the penalty to be imposed, it shall so inform the accused and supply him with a copy of the report and call upon him to show cause within a reasonable time, which shall not be less than seven days & not more than fourteen days, why the penalty proposed should not be imposed. The authority shall take into consideration any cause shown by the accused before passing orders.
- f) Nothing in the preceding sub-regulation shall apply:-
- i) Where the accused is dismissed or removed from service or reduced in rank on the ground of conduct which has led to a fine or of sentence of imprisonment ; or
 - ii) Where the Authority competent to dismiss or remove a person or to reduce him in rank is satisfied that for reasons to be recorded by that authority, it is not reasonably practicable to give the accused an opportunity of showing cause."

(Underlining supplied for emphasis)

10. Admittedly, the petitioner was inflicted with a major penalty of compulsory retirement, prescribed as such in Regulation 3 (b) (iii) of the “E & D Regulations”. As the petitioner is confronted with major penalty so in ordinary circumstances, respondents were bound to adhere the procedure ENVISAGED in Regulation 5 (e) of the “E & D Regulations”. Though Clause (ii) of Regulation 5(f) authorizes the authority competent to dismiss or remove a person or reduce him in rank to dispense with the opportunity of showing cause to accused if it is not reasonably practicable but for the said purpose, the authority has to record its reasons. Admittedly, neither regular inquiry, whatsoever, has been conducted by the authority, nor any reasons have been recorded for dispensing the regular inquiry. It is apparent from the show cause notice that some fact-finding inquiry was conducted prior to its issuance, which in no way is sufficient to justify the dispensation of regular inquiry.

11. The term “Show Cause Notice” in the departmental proceedings can be equated with First Information Report (F.I.R.) in a criminal case. “Show Cause Notice” is meant to state the grounds for launching departmental proceedings against the employee. It is thus necessary that a show cause notice must be worded properly and in an unambiguous manner, stating the nature of the allegation(s)/charge(s) to which the accused/employee has to respond. In somewhat similar circumstances in the case of SANAULLAH SANI versus SECRETARY EDUCATION SCHOOLS and others (2024 SCMR 80), the Supreme Court of Pakistan has held as under:-

“6. A conjoint reading of the various provisions of the PEEDA suggests that a show cause notice is not an accusation made or information given in abstract but an accusation made against an employee in respect of an act committed or omitted, cognizable thereunder. As such, the law intends that a show cause notice must conform to at least seven essential elements, and these include:

- (a) it should be in writing and should be worded appropriately;
- (b) it should clearly state the nature of the charge(s), date, and place of the commission or omission of acts, along with apportionment of responsibility;
- (c) it should clearly quote the clause of the PEEDA under which the delinquent is liable to be punished;
- (d) it should also indicate the proposed penalty in case the charge is proved;
- (e) it should specify the time and date within which the employee should submit his explanation in writing. It is also preferable to add in the show cause notice that if no written explanation is received from the accused within the prescribed date, the enquiry will be conducted ex-parte;
- (f) it should be issued under the signature of the competent authority and
- (g) it should contain the time, date and place of the inquiry and the name of the inquiry officer.

7. It must be mentioned here that strict compliance of the above conditions is vital so that the principle of natural justice is not violated. It is thus emphasised that the charges made in the show cause notice should not be vague. All the acts of commission or omission constituting the charge, and also forming the ground for proceeding against the employee, should be clearly specified because otherwise, it will be difficult for an employee, even by

projecting his imagination, to discover all the facts and circumstances that may be in the contemplation of the competent authority to be established against him, and thus, it will not only frustrate the requirement of giving him a reasonable opportunity to put up a defence but also amount to a violation of his fundamental right to a fair trial."

In the wake of above principles, when show cause notice is examined, it reflects that same is not in accord therewith. The petitioner has even not been confronted with any allegations/charges specifically except his previous conduct. Though no provision is cited under which show cause notice is issued but as per specific stance of the respondents, it is manifestly clear that the petitioner was proceeded under the "E & D Regulations". Needless to reiterate that the procedure prescribed in the "E & D Regulations" has not been followed at all.

12. There is yet another important aspect, the petitioner was awarded major penalty but without holding any regular inquiry. It is an oft-repeated principle of law that though it is discretionary with the department to dispense with the regular inquiry in the facts and circumstances of the case but such dispensation would be backed by some compelling justifiable reasons, assigned in writing, which are clearly lacking in the present case. The petitioner has thus been deprived of his vested right of fair trial as guaranteed under Articles 4 and 10A of the Constitution of the Islamic Republic of Pakistan, 1973. Reference to this effect can be made to MUHAMMAD NAEEM AKHTAR versus MANAGING DIRECTOR WATER AND SANITATION AGENCY LDA, LAHORE and others (2017 SCMR 356), SENIOR SUPERINTENDENT OF POLICE (OPERATION) and others versus SHAHID NAZIR (2022 SCMR 327) and FEDERATION OF PAKISTAN through Chairman Federal Board of Revenue FBR House, Islamabad and others versus ZAHID MALIK (2023 SCMR 603).

13. In the wake of above discussion, I feel no hesitation to observe that the departmental proceedings, culminating into imposition of major penalty of "compulsory retirement from service" upon the

petitioner, are fraught with patent illegalities and as such the order-in-original dated 05th March, 2021 as well as order of the appellate authority dated 17th March, 2022 and order passed in review dated 08th April, 2023, being illegal and unlawful are set-aside. As a sequel, this petition is **allowed**. The petitioner is reinstated in service subject to refund of dues received by him from the department within a period of one month, leaving the “College” to hold *de novo* proceedings by conducting a regular inquiry, which shall be completed within three months. Needless to observe that payment of back benefits, if any, shall also be subject to final outcome of the *de novo* departmental proceedings. There is no order as to costs.

(MIRZA VIQAS RAUF)
JUDGE

Sajjad

APPROVED FOR REPORTING

JUDGE