

Judgment Sheet

**PUNJAB SUBORDINATE JUDICIARY
SERVICE TRIBUNAL LAHORE
JUDICIAL DEPARTMENT**

1

SERVICE APPEAL NO.10 of 2018

ALI ASHTAR NAQVI

Versus

**LAHORE HIGH COURT, LAHORE Through its worthy Registrar and
another**

JUDGMENT

Date of hearing: 20.06.2023

Appellant by: M/s Abid Saqi and Sabahat Rizvi,
Advocates.

Respondents by: Mr. Jawwad Tariq Nasim, Advocate.

MIRZA VIQAS RAUF, J. The appellant herein was appointed as Civil Judge-cum-Judicial Magistrate on 04th July, 2010 after being successful in the competitive examination. After his appointment, the appellant was posted out to Jaranwala District Faisalabad whereafter he was transferred to Ferozewala District Sheikhupura. On successful completion of period of probation the appellant was promoted to BS-18 vide notification No.108/RHC/CJJ dated 04th July, 2014. The appellant, however, tendered his resignation which was accepted on 01st February, 2016. This followed a representation on behalf of the appellant but it was rejected on 23rd May, 2018, hence this appeal under Section 5 of the Punjab Subordinate Judiciary Service Tribunal Act, 1991 (hereinafter referred to as “Act, 1991”).

2. This appeal is resisted by the respondents on the ground that it is hopelessly barred by time as the appellant filed the representation after a considerable delay. Facts asserted in the appeal are also seriously controverted in reply submitted by the respondents.

3. Learned counsel for the appellant submitted that the appellant was having a lustrous career but he was having serious threats to his life by proscribed organization. It is contended that on apprehending threats to his life under compulsion, the appellant tendered his resignation which in no way is voluntary. Learned counsel submitted that on removal of threats, the appellant moved a representation for withdrawal of resignation but it is declined through impugned order. Learned counsel vehemently contended that the impugned order is not tenable under the law. It is also one of the contentions of learned counsel for the appellant that similarly placed employees were allowed to withdraw resignation and they were reinstated in the service. In order to supplement his contentions, learned counsel has placed reliance on MUHAMMAD ZAHOOR versus REGISTRAR LAHORE HIGH COURT, LAHORE and another (2005 SCMR 1194), Dr. MUHAMMAD MUNIR-UL-HAQ and others versus Dr. MUHAMMAD LATIF CHAUDHRY and others (1992 SCMR 2135), NABEELA KIRAN versus GOVERNMENT OF PUNJAB and others (2020 PLC (C.S.) 560) and Syed FAISAL RAZA GILLANI versus LAHORE HIGH COURT, LAHORE through Registrar and others (2015 PLC (C.S.) 137).

4. Conversely, learned counsel representing the respondents submitted that the appellant submitted his resignation with free will and consent and it was accepted on 01st February, 2016. He added that till acceptance of his resignation the appellant never made any request for its withdrawal. Learned counsel contended that the departmental appeal was beyond the prescribed period of limitation and as such instant appeal is also barred by time. It is argued with vehemence that after acceptance of resignation, the appellant is precluded to ask for its withdrawal. Learned counsel submitted that the appellant was not treated discriminatory. Placed reliance on

SAJJAD HUSSAIN versus SECRETARY, MINISTRY OF RAILWAYS,
ISLAMABAD and others (2012 SCMR 195).

5. Heard. Record perused.

6. The appellant was initially appointed as Civil Judge-cum-Judicial Magistrate on 04th July, 2010 as probationary. On successful completion of probation period, he was promoted to BS-18 vide notification dated 04th July, 2014. It appears from the record that during his service the appellant absented himself from the duty as a result of which disciplinary proceedings were started against him under the Punjab Civil Servants (Efficiency & Discipline) Rules, 1999. The inquiry officer after conducting inquiry found the appellant guilty of misconduct in terms of Rule 3 of the Rules ibid and recommended the imposition of major penalty in the shape of dismissal from service against him through his report dated 17th August, 2015. The appellant, however, tendered his resignation on 18th October, 2015 which is reproduced below for ready reference and convenience, so as to properly appreciate the contentions of learned counsel for the appellant in its true prospective :-

“The undersigned was appointed as a civil Judge-cum-Judicial Magistrate on 4th July, 2010 by the honorable Lahore High Court, Lahore. On the successful completion of probation, the undersigned was promoted to Civil Judge Class II vide Notification 108/RHC/CJJ dated 4th July, 2015 by the honorable Lahore, High Court Lahore.

The undersigned during all his years in service as a civil Judge performed his judicial duties with honesty, dedication and hard work. There has been no dereliction of duties at all material times. The undersigned now in order to further broaden his judicial horizon wants to continue his legal practice and education as a lawyer. Therefore, it is humbly submitted to kindly accept the resignation, of the undersigned, from services as a Judicial Officer and wish him luck in his future endeavors for rule of law and administration of justice.”

7. We have noticed that though learned counsel for the appellant while taking us to press briefing and special reports of the police vehemently contended that there were serious threats to life of the appellant and in the said background he tendered his resignation which was not voluntary, rather on account of compelling circumstances but we are constrained to observe that no such reason

was mentioned in the resignation itself. It is also evident from the notification No.19/RHC/CJJ. dated 01st February, 2016 that the resignation of the appellant was accepted on account of droppage of disciplinary proceedings initiated against him on the charge of misconduct. It is also manifestly clear that despite the fact that matter of acceptance of resignation remained under consideration for a considerable period but no effort was made by the appellant to move for its withdrawal. Even after acceptance of the resignation the appellant remained mum for a considerable period and finally he moved the representation on 09th October, 2017 which was received by the respondents on 21st April, 2018.

8. The term “resignation” is defined in various law dictionaries as follows :-

Black's Law Dictionary Tenth Edition

“**resignation**, **1.** The act or an instance of surrendering or relinquishing an office, right, or claim. **2.** A formal notification of relinquishing an office or position; an official announcement that one has decided to leave one’s job or organization, often in the form of a written statement. **3.** Hist. The surrender to the lord of the vassal’s interest in land.”

Merriam-Websters' Collegiate Dictionary Eleventh Edition

“**resignation** **1 a;** an act or instance of resigning something : SURRENDER **b:** a formal notification of resigning **2 :** the quality or state of being resigned : SUBMISSIVENESS”

Oxford Advanced Learner's Dictionary New 9th Edition

“**resignation** **1** the act of giving up your job or position; the occasion when you do this: a letter of resignation *° There were calls for her resignation from the board of directors. ° Further resignations are expected. COLLECTIONS AT JOB* **2** a letter, for example to your employers, to say that you are giving up your job or position: *to offer/hand in/tender your resignation* *° We haven't received his resignation yet.* **3** patient willingness to accept a difficult or unpleasant situation that you cannot change: *They accepted their defeat with resignation.*”

Joint reading of the above referred definitions of “resignation” leads us to an irresistible conclusion that resignation means “*formal renouncement or relinquishment of an office*”. It must be intentional and voluntary. It is trite law that for drawing a conclusion as to

whether the resignation was voluntary or otherwise facts and circumstances in toto have to be taken into consideration.

9. It is also an oft repeated principle of law that once a resignation is accepted by the competent authority, the employee tendering the same is precluded to recall it. Reliance in this respect can be placed on MUHAMMAD SALIM KHAN versus DIRECTOR-GENERAL, BUREAU OF EMIGRATION AND OVERSEAS EMPLOYMENT and another (1991 SCMR 440).

10. In the case of MUHAMMAD ZAHOOR versus REGISTRAR LAHORE HIGH COURT, LAHORE and another (2005 SCMR 1194) the Supreme Court of Pakistan laid down a litmus test for determining the nature of resignation as to whether it is voluntary or otherwise in the following words :-

“10. Taking into consideration the principle laid down in the above judgment and in the judgment of Abraham (*ibid*), wherein it has been held that in determining whether a person has resigned or has been compelled to resign the correct test is to find out whether the acts and conduct of the servant evince an intention no longer to be bound by the contract, or whether the conduct of the employer amounts to a basic refusal to continue the servant on the agreed terms of employment. In the latter case there is a wrongful dismissal and repudiation of the contract and the use of polite instead of peremptory language would not alter the conclusion. In our considered opinion, in the instant case the resignation was not tendered voluntarily, therefore, the Tribunal erred in law in not granting the relief to the petitioner.”

11. So far case of **Syed Faisal Raza Gillani's *supra*** is concerned, it is observed that in the said case the Judicial Officer concerned after tendering his resignation immediately submitted an application for its withdrawal before its acceptance by the competent authority. In the said background it is observed that no explanation was on record as to why the application of appellant for withdrawal of resignation was withheld and not considered before acceptance of resignation, which is not the case here. Next is the case of **Nabeela Kiran's *supra*** wherein it was observed that the Judicial Officer concerned infact moved a complaint for the redressal of her grousers and grievances, which was wrongly treated as her resignation.

Perusal of the facts clearly reveals that facts in the said case were entirely different as compared to the present one. So far judgment in the case of ***Dr. Muhammad Munir-ul-Haq and others*** is concerned, it is observed with all reverence that the principles laid down therein with regard to resignation are absolute and unequivocal.

12. After having a detail survey of law on the subject, we are of the considered view that the resignation of the appellant was voluntary without any hint of doubt and as such he is precluded to ask for its withdrawal and reinstatement in service.

13. Adverting to the question of limitation it is noticed that in terms of Section 21 of the Punjab Civil Servants Act, 1974 (hereinafter referred to as “Act, 1974”) right of appeal or representation is available to a Judicial Officer in respect of any order relating to terms and conditions of service, which is to be moved within sixty days of communication of such order to him. Resignation of the appellant was accepted on 01st February, 2016 but he preferred departmental appeal on 21st April, 2018 which was clearly beyond the prescribed period of limitation. Law is well settled that when departmental appeal or representation is barred by time even if the appeal before the Service Tribunal is filed within time it would be hit by limitation. In terms of Section 5(a) of the “Act, 1991” where an appeal, review or representation to a departmental authority is provided under the “Act, 1974”, or any rules against any such orders, no appeal shall lie to the Tribunal unless the aggrieved person has preferred an appeal or application for review or representation to such departmental authority and a period of ninety days has elapsed from the date on which such appeal, application, or representation was so preferred. On account of time barred representation/departmental appeal, the instant appeal against the order dated 23rd May, 2018 though apparently seems to be in time but actually it is barred by time. Reliance in this respect can be placed on SAJJAD HUSSAIN versus SECRETARY, MINISTRY OF

RAILWAYS, ISLAMABAD and others (2012 SCMR 195) and MUHAMMAD ASLAM versus WAPDA and others (2007 SCMR 513).

14. The nutshell of above discussion is that this appeal is devoid of any merits, resultantly it is **dismissed** with no order as to costs.

(MUHAMMAD SAJID MEHMOOD SETHI) (MIRZA VIQAS RAUF)
MEMBER **CHAIRMAN**

APPROVED FOR REPORTING

MEMBER

CHAIRMAN

Shahbaz Ali*