

Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT

Writ Petition No.65818 of 2020.

*Safdar Iqbal Chaudhry. Versus Chief Operating Officer,
Technical Education &
Vocation Training
Authority (TEVTA) &
others*

JUDGMENT

Date of hearing: 05.06.2023.

Petitioner by: Mr. Masood Ahmad Zafar, Advocate.

Respondents by: Rana Shamshad Khan, Additional
Advocate-General.

Mr. Umair Shahid, Advocate, for TEVTA.

Shujaat Ali Khan, J:- Through this single judgment I intend to decide W.P. No.65818 of 2020 (this petition) as well as W.P. No.17823 of 2023 (connected petition) having commonality of law and facts.

2. Unnecessary details apart, the facts, forming factual canvass of this petition are that the petitioner, while serving as Chief Instructor (BS-19), was transferred from Government College of Technology, Raiwind Road, Lahore to Government College of Technology, Multan, *vide* order, dated 12.07.2012,

against which he filed W.P.No.19449 of 2012 before this Court, wherein the operation of transfer order of the petitioner was suspended, *vide* order, dated 17.08.2012 and the said Writ Petition was finally decided through order, dated 19.11.2015. Since during subsistence of injunctive order, the petitioner was again transferred from Government College of Technology, Raiwind Road, Lahore to Government College of Technology, Railway Road, Lahore *vide* order, dated 28.05.2013, he was constrained to file W.P.No.19022 of 2013 before this Court, which was disposed of with the direction to the relevant authority to decide the matter within two weeks. Pursuant to order of this Court, the Competent Authority decided the matter through order, dated 04.06.2015, against which the petitioner filed W.P.No.24178 of 2015 before this Court. Simultaneously, departmental proceedings were initiated against the petitioner *qua* allegation of misconduct on account of absence from duty. The Inquiry Officer submitted its inquiry report recommending imposition of certain penalty against the petitioner. On receipt of inquiry report, the Competent Authority appointed Hearing Officer, who submitted his report, dated 20.03.2018. The Chief Minister, being Competent Authority, disagreed with the inquiry report as well as report of the Hearing Officer and ordered for *denovo* inquiry against the petitioner but before finalization of the *denovo* proceedings petitioner superannuated

on 30.04.2020. As a result, the said proceedings stood abated, factum whereof was also incorporated in order, dated 08.03.2023, passed by this Court in W.P.No.64860 of 2022, filed by the petitioner challenging the act of the departmental authorities towards continuation of the departmental proceedings against him, despite his superannuation. The Chief Operating Officer, Technical Education & Vocational Training Authority (TEVTA) (respondent No.1), while issuing retirement Notification of the petitioner on 04.12.2020, ordered to withhold Rs.37,73,122/- from his pensionary emoluments till the decision of *denovo* inquiry/Public Accounts Committee Audit Para, in terms of rule 1.8 of the Punjab Civil Services Pension Rules, 1963 (**“the Pension Rules, 1963”**). Being aggrieved of said Notification, the petitioner has filed this petition.

3. Insofar as factual background of connected petition is concerned, the petitioner has assailed the *vires* of letter, dated 17.01.2023, issued by respondent No.2, whereby it was conveyed that the inquiry pending against the petitioner under the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 (**“the PEEDA Act, 2006”**) was converted into an inquiry under rule 1.8(a) of the Pension

Rules, 1963. He has also assailed the validity of letters, dated 09.03.2023 and 10.03.2023, asking him to appear for inquiry.

4. Learned counsel for the petitioner submits that since the petitioner superannuated from service on 30.04.2020, no proceedings could continue for more than two years after his retirement from service as contemplated under section 21 of the PEEDA Act, 2006; that continuation of departmental proceedings, against the petitioner despite his superannuation, speaks volumes about the *mala fide* conduct of the respondents; that disciplinary proceedings were initiated against the petitioner on account of alleged absence from duty, thus, the same could not be converted into proceeding under rule 1.8(a) of the Pension Rules, 1963, hence the entire proceedings are *coram-non-judice*; that since the operation of the transfer order, issued in the year 2012, was suspended by this Court and the injunctive order inured till the year 2015, the petitioner could not be treated as absent from duty and that even if the proceedings against the petitioner were to be conducted under rule 1.8 *ibid*, the departmental authorities could not withhold more than 20% of the due pension of the petitioner but the amount withheld by respondent No.2, being much more than the one stipulated under rule 1.8 *ibid*, is not justified. Relies on

Province of Punjab through Conservator of Forest, Faisalabad

and others v. Javed Iqbal (2021 SCMR 328), Chief Manager, Staff Bank of Pakistan and 2 others v. Ghulam Rasool and others (2011 SCMR 313), Province of the Punjab through Secretary, Livestock and Dairy Development Department, Punjab, Lahore and others v. Syed Munir Hussain Shah (199 SCMR 1326), Hafiz Muhammad Kaleem ud din v. Province of Punjab and others (2022 PLC (C.S.) 999), Khalid Imran Khan Barki v. Government of Punjab and others (2021 PLC (C.S.) 426), Masood Khan and another v. Federation of Pakistan through Chairman Federal Board of Revenue, Islamabad and another (2021 PLC (C.S.) 1540), Irshad Hussain v. Municipal Corporation Multan through Mayor and 3 others (2019 PLC (C.S.) 1203), Mrs. Riffat Sattar v. Government of the Punjab through Secretary and 6 others (2016 PLC (C.S.) 472), Secretary, Government of Punjab, Finance Department and 269 others v. M. Ismail Tayer and 269 others (2015 PLC (C.S.) 296), Ehsan-ul-Haque v. Executive Engineer, Ahmadpur Canal Division Ahmadpur East and 2 others (2011 PLC (C.S.) 1523), Noor Ahmad Shah v. Government of N.W.F.P. through Secretary Education and 5 others (2003 PLC (C.S.) 1400) and Muhammad Masood Joya v. Government of Punjab and others (PLJ 2000 Lahore 244).

5. Learned counsel, appearing on behalf of the respondents-

TEVTA, states that the petitioner being civil servant could not approach this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the Constitution) in view of the embargo contained under Article 212 of the Constitution; that since the Show Cause Notice, subject matter of the connected petition, has been issued under rule 1.8(a) of the Pension Rules, 1963, reliance of learned counsel for the petitioner on rule 1.8(b) is irrelevant; that there is no cavil with the fact that in view of section 21 of the PEEDA Act, 2006, the departmental proceedings initiated against a retiree cannot continue after two years of his retirement but no limitation having been provided to initiate proceedings under rule 1.8 *ibid*, the impugned proceedings are totally justified; that to claim full pension, good conduct on the part of a government servant during service as well as after retirement is *sine-qua-non*, hence no exception can be taken against the proceedings, subject matter of these petitions; that a line of distinction has been drawn by the Apex Court of the country between the proceedings under rule 1.8(a) *ibid* and those under rule 1.8(b) *ibid*, no interference is called for by this Court and that since the petitioner remained absent from duty for more than two and a half years, he does not deserve any leniency. Relies on Chief Secretary, Government of Punjab, Lahore and others v. Ms. Shamim Usman (2021 SCMR 1390), Ali Azhar Khan Baloch

and others v. Province of Sindh and others (2015 SCMR 456), Taj Muhammad Afridi v. Principal Secretary to the President Secretariat and others (2011 SCMR 1111), The Government of N.W.F.P. through the Secretary to the Government of N.W.F.P. Communications and Works Departments, Peshawar v. Mohammad Said Khan and another (PLD 1973 S.C. 514) and Muhammad Nawaz v. Ghulam Mustafa Ansari and 7 others (PLD 2009 Lahore 467).

6. Learned Law Officer, while supporting the arguments advanced by learned counsel appearing on behalf of the respondents-TEVTA, states that the verdict of Hon'ble Supreme Court of Pakistan rendered in the case of The Government of N.W.F.P. through the Secretary to the Government of N.W.F.P. (supra) has been reiterated by it in its recent judgment reported as Federation of Pakistan through General Manager/Operations Pakistan Railways, Headquarters Office, Lahore and others v. Shah Mohammad (2021 SCMR 1249), thus, no contrary view can be formed by this Court; that question of pension being part of terms and condition of service of a government servant, this Court lacks jurisdiction to adjudicate upon the said issue and that since the departmental proceedings initiated against the petitioner could not reach their logical conclusion due to filing of different proceedings by the

petitioner, thus, he cannot be allowed to take premium of the same at this stage.

7. Learned counsel for the petitioner, while exercising his right of rebuttal, submits that since the petitioner has already retired from government service, the bar contained under Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973, does not impede his way to approach this Court.

8. I have heard learned counsel for the parties at considerable length and have also gone through the documents, appended with this petition, as well as the case-law cited at the bar.

9. Firstly taking up the objection raised by learned counsel, appearing on behalf of the respondents-TEVTA against maintainability of this petition, I am of the view that since no final order has been passed against the petitioner, he cannot approach the Punjab Service Tribunal as urged by learned Law Officer as well as learned counsel appearing on behalf of the respondent-TEVTA, rather the petitioner being remediless has only option to approach this Court. Reliance in this regard is placed on the cases reported as *Umer Daraz v. Additional Sessions Judge and others (2021 MLD 2077)* and *Finance Department, Azad Government of the State of Jammu and Kashmir, through Secretary Finance, Civil Secretariat,*

Chatter Domail, Muzaffarabad v. Mahboob Ahmed Awan
(2020 PLC (C.S) 741).

It is important to observe over here that in routine, Writ Petition against issuance of Show Cause Notice is not maintainable, however, where the Show Cause Notice has been issued in violation of the law on the subject, the same can be challenged in Writ Petition as held in the cases reported as Commissioner Inland Revenue and others v. Jahangir Khan Tareen and others (2022 SCMR 92), Jahangir Muggo and others v. Securities and Exchange Commission of Pakistan and others (2022 CLD 1325), Pakistan Telecommunication Company Limited v. Federation of Pakistan through Ministry of Information and others (2021 CLC 159), Reliance Commodities (Private) Ltd. v. Federation of Pakistan and others (PLD 2020 Lahore 632) and Dr. Fatima Arshad v. Government of the Punjab and others (2020 PLC (C.S.) 688).

If the objection raised by learned Law Officer as well as learned counsel appearing on behalf of the respondent-TEVTA, is considered in the light of the afore-referred judgments, there leaves no ambiguity that the same hardly holds any water, therefore, the same is accordingly spurned.

10. Now reverting to the merits of the case, I have noted that firstly the petitioner was transferred from Government College of Technology, Raiwind Road, Lahore to Government College of Technology, Multan, *vide* order, dated 12.07.2012, against which he filed W.P.No.19449 of 2012, which came up for preliminary hearing on 17.08.2012 when this Court while issuing notice to the respondents suspended the operation of the transfer order and the said injunctive order remained intact till the final decision of said Writ Petition on 19.11.2015. In this backdrop, the petitioner could not be considered absent from duty merely for the reason that he did not join Government College of Technology, Multan, pursuant to order, dated 12.07.2012.

11. During the course of arguments learned counsel representing TEVTA took specific plea that since the petitioner remained absent from duty for two and a half years he was guilty of gross misconduct. A cursory glance over the Charge Sheet issued against the petitioner shows that under Charge at Sr.No.3, it was *inter alia* alleged that he remained absent from duty from 06.06.2015 to 14.12.2015 meaning thereby that period of absence was not so long as alleged by the learned counsel appearing on behalf of TEVTA. Moreover, admittedly W.P. No.19449 of 2012 was dismissed by this Court on

19.11.2015, thus, the petitioner could not be treated as absent from duty from 06.06.2015 to 19.11.2015. This Court is cognizant of the fact that though it has been alleged in the Charge, under discussion, that the petitioner unlawfully received salary for the period from 01.06.2013 to 14.12.2015 but it was not alleged that the petitioner remained absent from duty for the said period. Moreover, learned counsel for TEVTA failed to convince this court that if the petitioner was not entitled to salary for the period, referred *supra*, as to why the same was paid to him and as to why departmental action was not taken against the officials/officers who were involved in alleged unlawful payment of salary to the petitioner.

12. It is pertinent to mention over here that in Charge at Serial No.2 of the Charge Sheet it was alleged that instead of complying with the transfer order, the petitioner resorted to file various Writ Petitions before this court, which *prima facie* stands proof of the fact that departmental authorities, being annoyed with the petitioner on account of filing proceedings before this court, put up the matter before the competent authority for initiation of disciplinary proceedings against the petitioner despite the fact that availing of legal remedy by an aggrieved employee does not entail any departmental action.

13. It is very astonishing to note that on the one hand the respondents have adopted the plea that while proceeding against the petitioner they acted fairly but on the other with a view to nullify the effect of the injunctive order, issued by this Court in W.P.No.19449 of 2012, they issued another order, dated 28.05.2013, transferring the petitioner from Government College of Technology, Raiwind Road, Lahore to Government College of Technology, Railway Road, Lahore. This fact alone is sufficient to establish that instead of honouring the order, passed by this Court, the respondents were all out to displace the petitioner from Government College of Technology, Raiwind Road, Lahore. In this scenario, it is not a simple matter of disciplinary proceedings against a government servant rather the same seems to be tainted with *mala fide*.

14. It is admitted position that till the superannuation of the petitioner, the departmental proceedings, initiated against him *inter-alia* on account of absence from duty, could not reach their logical conclusion as the Competent Authority while disagreeing with the recommendations of the Inquiry Officer as well as Hearing Officer, ordered for *denovo* inquiry but before completion of the said inquiry, the petitioner superannuated. According to Fundamental Rule 54-A, the departmental proceedings, pending against a government servant, stand

abated in the event of his retirement from government service.

The said analogy has also been endorsed by the superior Courts

in the cases reported as Muhammad Zaheer Khan v.

Government Of Pakistan through Secretary, Establishment and

others (2010 SCMR 1554), Deputy Director, Food,

Bahawalpur and others v. Akhtar Ali and others (1998 SCMR

597), Nasir Kamal v. Federation of Pakistan through Secretary,

Ministry of Maritime Affairs, Islamabad (2021 PLC (C.S)

1226) and Syed Anwar Ali Shah v. Zarai Tarqiati Bank Ltd.

(2021 PLC (C.S) 662).

15. During the course of arguments, learned counsel, appearing on behalf of the respondent-TEVTA, while justifying proceedings initiated against the petitioner, took specific plea that where misconduct on behalf of a retiree during service or after retirement is established, he can be proceeded against under rule 1.8 *ibid*. There is no cavil with the fact that the Competent Authority can proceed against a retiree if he is found involved in any activity prejudicial to good conduct of a government servant/retiree but I never came across any precedent where even after retirement, after abating the disciplinary proceedings pending against a government servant the same were ever switched over to those under rule 1.8(a) *ibid*. The logic behind the said approach is that the departmental

proceedings against a serving government servant and those against a retiree are governed under distinct laws/rules and they have no overlapping effect on each other. In a number of cases, the superior Courts have held that when law provides a specific mechanism to perform an act, the same cannot be allowed to be deviated by any authority but the conduct of the respondents, portrayed above, seems otherwise.

16. It is also relevant to note that to initiate proceedings against a retiree under rule 1.8 *ibid*, it is condition precedent that the Competent Authority should prove misconduct on the part of a retiree. Insofar as the case in hand is concerned, learned counsel, appearing on behalf of the respondent-TEVTA, has frankly conceded that the proceedings under rule 1.8 have been initiated against the petitioner on account of his alleged absence from duty during service. At the cost of repetition, it is observed that since the operation of transfer order, issued against the petitioner was suspended by this Court *vide* order, dated 17.08.2012, non-joining of the petitioner at new place of posting did not entail any penal action at the hands of the Competent Authority. This Court has no sympathy with a person who is found involved in any activity which is prejudicial to the good conduct of a government servant but at the same time the departmental authorities cannot be allowed to

unnecessarily engage government servants in departmental proceedings for years and years just to cause mental agony and keep them aloof from their financial rights/future service prospects.

17. It is pertinent to mention over here that according to section 18 of the Punjab Civil Servants Act, 1974, a retiree has indefeasible right to pension on his retirement and the same can only be withheld upon fulfillment of the conditions enumerated under sub-section 3 of section 18. Learned counsel, representing the respondent-TEVTA was posed with the query for more than once that as to how gross misconduct, on the part of the petitioner, as envisaged under rule 1.8(a) *ibid*, is established but he has not been able to reply satisfactorily. Undeniably, the rules being subservient to the provisions of the parent statute cannot be given precedence over the latter. When none of the conditions postulated under section 18(3) of the Punjab Civil Servant Act, 1974 are attracted, respondents cannot be allowed to withhold the pensionary emoluments of the petitioner on the basis of untenable grounds.

18. While addressing the Court, learned counsel, appearing on behalf of the respondent-TEVTA, specifically pleaded that the departmental proceedings, initiated against the petitioner, could not reach their logical conclusion due to filing of multiple

proceedings by the petitioner before different *fora* including this Court. In this regard, I am of the view that admittedly the injunctive order, issued by this Court, stood discharged with the decision of W.P.No.19449 of 2012 on 19.11.2015 but departmental proceedings could not be concluded till 20.04.2020 when the petitioner superannuated. It does not lie in the mouth of the respondents to claim that the departmental proceedings could not be completed against the petitioner due to issuance of an injunctive order by this Court.

19. The resume of facts, narrated above, shows dismal picture of the inquiry proceedings initiated against the petitioner. Neither the departmental proceedings initiated against the petitioner were completed within the prescribed/extended period provided under the PEEDA Act, 2006 nor has any reason been given for such unconscionable delay justifying conversion of departmental proceedings initiated under the PEEDA Act 2006 into those under rule 1.8(a) *ibid*. If the proceedings under rule 1.8(a) *ibid* are allowed to be continued the petitioner would again be placed in square one despite lapse of more than seven years from the start of departmental proceedings against him.

20. The continuation of departmental proceedings against a government servant for years and years without any fruitful

result create panic among them which practice should not be approved rather deserves to be deprecated with full vigor. If the competent opts to initiate proceedings against an employee it should ensure that the same are taken to their logic end within the prescribed/extended period provided under the law instead of using the said proceedings as hanging sword to satisfy the personal vendetta.

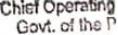
21. In this petition, the petitioner has assailed validity of Notification, dated 04.12.2020, which for convenience of reference is imaged below:-

	GOVERNMENT OF THE PUNJAB TECHNICAL EDUCATION & VOCATIONAL TRAINING AUTHORITY 96-H, GULBERG-II LAHORE PHONE : 04299263055-9 www.tevta.gop.pk		
(Pension/ HRM WING)		Issue Date: 04-12, 2020	
T.S.27/S/L.F/2-104	Rev No. 00		
NOTIFICATION			

On attaining the age of superannuation, Mr. Safdar Iqbal Ch. S/O Ch. Falak Sher, residing at 166-Hidayat Ullah Block, Mustafa Town, Wahdat Road, Lahore having contact No. 0323-8845944, Chief Instructor, drawing pay Rs. 1,36,740/- as under in BS-20 (Time Scale Promotion) Personal No. 30064780 CNIC No. 35202-7313563-3, presently posted at Govt. College of Technology, Railway Road, Lahore, shall stand retired from Government service on 30-04-2020 (A.N.).

Basic Pay	1,32,230/-
Special Pay	--
Personal Pay	4510/-
Qualification Pay	--
Technical Pay	--
Sr. Post Allowance	--
One Increment on Notional bases	-
Total Pay Rs.	1,36,740/-

2. Orderly allowance is Nil.
3. His date of birth is 01-05-1960. Date of 1st entry into govt. service is 13-12-1983 and EOL availed is Nil. Total length of qualifying service for pension is 36 years 04 months 19 days. His deputation period is Nil. Original Service Book of Non gazette period and Statement of Gazetted period are enclosed.
4. A Denovo Inquiry is pending against him.
5. An amount of Rs. 37,73,122/- withheld from the pension / gratuity till the decision of Denovo Inquiry / PAC Audit Para in pursuance of Rule-1.8 of Punjab Civil Service Pension Rules, 1963.
6. Advances drawn are Nil
7. Descriptive Roll, undertaking to make good Government losses and option for commutation is enclosed as Annexure-A.
8. Administrative and financial sanction for grant of pension with commutation @ (35%), as determined by the Accountant General Punjab, Lahore is hereby accorded in favour of Safdar Iqbal Ch., as admissible under the rules.


(AKHTAR ABBAS BHARWANA)
 Chief Operating Officer
 TEVTA 

From the above imaged Notification, it is abundantly clear that retirement of the petitioner from service on account of superannuation w.e.f. 30.04.2020 was notified on 04.12.2020 despite the fact that departmental authorities are bound to notify retirement of a government servant much prior to his date of retirement. This fact alone speaks volumes about *mala-fide* conduct of the respondents.

22. Learned counsel appearing on behalf of TEVTA has repeatedly argued that since the petitioner did not perform any duty during pendency of his different Writ Petitions, he was not entitled to any salary and the amount paid to him is liable to be recovered. In this regard, I am of the view that when the operation of the transfer order of the petitioner was suspended by this court, the respondents could assign any duty to him at his existing place of posting but when they chose to keep the petitioner aloof from performance of any duty, with a view to portray him as shirker, the blame of non-performance of duty cannot be attributed to the petitioner rather the responsibility in that regard lies on the shoulders of the departmental authorities. At the cost of repetition, it is observed that mala fide conduct of the relevant authorities is also evinced from the fact that instead of honouring the order of this court they devised a plan to transfer the petitioner from his existing place of posting by

issuing fresh transfer order, during subsistence of the interim relief granted by this court. The courts should jealously guard against disobedience of their orders and for that purpose they should take stern action against the persons involved in such activities.

23. During the course of arguments, learned Law Officer as well as learned counsel representing the respondents-TEVTA put much emphasis on the case of The Government of N.W.F.P. through the Secretary to the Government of N.W.F.P. Communications and Works Departments, Peshawar (supra) to maintain that the Competent Authority enjoys unfettered powers to initiate proceedings against a retiree under rule 1.8 *ibid*, notwithstanding the period elapsed after retirement. With due reverence to the Apex Court of the country, I am of the view that the said case is quite distinguishable from the facts and circumstances of the present case inasmuch as firstly, in the referred case departmental proceedings were not initiated against the government servants during their service and secondly the role attributed to them was gross negligence to supervise the construction of the subject bridge, which, by no stretch of imagination can be considered at par with the allegation of absence from duty which too stands justified in view of the injunctive order issued by this Court. While dilating

upon the question relating to the powers of the Competent Authority to invoke penal provision of rule 1.8 *ibid*, the Apex Court of the country in the referred case *inter-alia* held as under:-

"It must now be taken as well-settled that a person who enters Government service has also something to look forward after his retirement, to what are called retirement benefits, grant of pension being the most valuable of such benefits. It is equally well-settled that pension like salary of a civil servant is no longer a bounty but is a right acquired after putting in satisfactory service for the prescribed minimum period. A fortiori, it cannot be reduced or refused arbitrarily except to the extent and in the manner provided in the relevant rules. Conversely full pension admissible under the rules is not to be given as a matter of course unless the service rendered has been duly approved (See Art. 470, Civil Service Regulations). It is equally well settled that if the service has not been thoroughly satisfactory, the authority sanctioning the pension is empowered under the said Article to make such reduction in the amount as it may deem proper. This power is however exercisable only before pension is actually sanctioned." (emphasis provided)

Further, while drawing a line of distinction between clauses (a) & (b) of rule 1.8 *ibid*, the Hon'ble Supreme Court in the case, under discussion, has *inter-alia* concluded as under:-

"A plain reading of both clauses (a) and (b) would however, make it at once clear that each clause is a self-contained and independent provision designed to cover two entirely different situations. Under clause (a) maintenance of "good conduct" is made an inseparable condition for the grant or continuance of pension to a Government servant and the Government reserves to itself plenary power to withhold or withdraw a pension or any part thereof if the pensioner is convicted for serious crime or found guilty of grave misconduct whether during or after completion of his service. The

language of this clause is clear and does not admit of any doubt. This is also consistent with Article 470 of the Civil Service Regulations which provides that full pension admissible under the rules is not to be given as a matter of course unless the service rendered has been approved for pension. If the service has not been satisfactory, the authority sanctioning the pension is empowered to make such reduction in the amount as it thinks proper. However, clause (a) cannot be used to affect penal recovery if there is a case of fraud or negligence during the service though it may be made a ground for the finding that the service has not been thoroughly satisfactory. Clause (b) of rule 1.8 however appears to be a recent addition which corresponds to Art. 351-A, Civil Service Regulations, is of great importance. It empowers the Government to order recovery from the pension of the whole or any part of any pecuniary loss caused to the Government if the pensioner is found "in departmental or judicial proceedings" to have been guilty of grave misconduct or negligence during his service.

Another important distinction between the two clauses is that under clause (b) the recovery will be only of a specified amount and for that reason the order will exhaust itself once the recovery is made. On the other hand any order made under clause (a) will depend upon the general quality of service rendered. It will reduce his pension for the remainder of his life and not for a particular period only or in respect of a specified sum as under clause (b). This clearly brings into sharp relief the different purposes for which clauses (a) and (b) have been framed." (emphasis provided)

A bird's eye view over the afore-quoted portions from the judgment of the Hon'ble Supreme Court of Pakistan, referred by learned counsel representing the respondent-TEVTA, brings to limelight that if the Competent Authority opts to proceed against a retiree in terms of rule 1.8 *ibid*, it can do so before sanctioning the pension. Further it has been clarified that the said rule is only applicable when grave misconduct on the part

of a retiree is established through departmental/judicial proceedings. Moreover, when a specific amount of recovery is involved the relevant authority can invoke clause (b) instead of clause (a). As far as the case in hand is concerned, admittedly the departmental authorities want to recover Rs.37,73,122/- allegedly paid to the petitioner during the period when he did not perform any duty, thus, clause (a) is inapplicable to his matter rather the department could start proceedings under clause (b) of rule 1.8 *ibid*. The petitioner cannot be held guilty of grave misconduct in absence of any proof in that regard and the continuation of proceedings against him under rule 1.8(a) *ibid*, would be an exercise in futility.

24. Now coming to the case-law referred by the learned counsel representing TEVTA as well as learned Additional Advocate General, I am of the view that the same is inapplicable to the peculiar facts and circumstances of the present case inasmuch as in none of the referred cases proceedings under rule 1.8 *ibid* were initiated against a government servant while he was in service. Moreover, in the case of Chief Secretary, Government of Punjab, Lahore and others (supra) the matter revolved round the promotion of a civil servant which is not the position in the case in hand. Likewise, the question before the Hon'ble Supreme Court in

Ali Azhar Khan Baloch and others (*supra*) pertained to the out of turn promotion to the Police personnel which has no connectivity with the proposition involved in the present case. Similarly, the point of law thrashed by the Apex Court of country in Taj Muhammad Afridi (*supra*) related to period of limitation to file appeal before the Service Tribunal in a matter arising out of proceedings held under the Removal from Service (Special Powers) Ordinance, 2000 which stands poll apart from the question involved in the case in hand. The distinguishing features between the case of the petitioner and those discussed in the matter of The Government of N.W.F.P. through the Secretary to the Government of N.W.F.P. Communications and Works Departments, Peshawar (*supra*) have already been detailed in para 24-*ante*. Taking up the case of Muhammad Nawaz (*supra*) I am of the view that facts of the said case being quite distinct the same cannot be quoted as precedent in the present case.

25. As a necessary corollary to the discussion made in the foregoing paragraphs, I have no hesitation to hold that departmental proceedings pending against the petitioner could not be converted into those under rule 1.8(a) *ibid* during service of the petitioner. Further, the conditions envisaged under rule 1.8(a) are not attracted in the case of the petitioner.

Consequently, this petition is **accepted** and impugned Notification to the extent of withholding of certain amount of the petitioner is declared illegal. Resultantly, it is directed that amount of Rs.37,73,122/- withheld from the pensionary emoluments of the petitioner be released immediately.

26. Now taking up the connected petition, it is observed that when the conversion of departmental proceedings pending against the petitioner into those under rule 1.8(a) *ibid* has been declared illegal, the communications challenged therein cannot be allowed to hold field. Consequently, connected petition is also **accepted** and impugned letters are **quashed**. There shall be no order as to costs in both these petitions.

Judge

APPROVED FOR REPORTING

Judge

Jamil*