

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE FAISAL ARAB
MR. JUSTICE IJAZ UL AHSAN

Civil Petition No.733 of 2018

(Against the judgment dated 17.01.2018 passed by the Peshawar High Court, Peshawar in Writ Petition No. 4783-P of 2016).

Directorate General Emergency Rescue Service
1122 Khyber Pakhtunkhwa, Peshawar. ...*Petitioner(s)*

versus

Nizakat Ullah. ...*Respondent(s)*

For the petitioner(s): Mr. Sikandar Rashid, ASC.
Syed Rafaqat Hussain Shah, AOR.

For the respondent(s): N.R.

Date of hearing: 22.02.2019.

ORDER

IJAZ UL AHSAN, J. - The petitioner seeks leave to appeal against a judgment of the Peshawar High Court, Peshawar, dated 17.01.2018. Through the impugned judgment, while allowing a constitutional petition filed by the Respondent, his dismissal from service was set aside and he was directed to be reinstated with all back benefits.

2. The Respondent was appointed as an Emergency Medical Technician on 15.03.2010 in Khyber Pakhtunkhwa Emergency Rescue Services 1122. On 31.03.2015, he was suspended from service and an inquiry was initiated against him. He was issued a show cause notice on 29.04.2014

leveling certain allegations against him including misbehavior with higher officials and sending them abusive SMS messages. The Respondent denied the allegations whereafter considering his response unsatisfactory, he was dismissed from service vide order dated 01.06.2015. His departmental appeal was decided, after a direction was issued by the High Court. The said appeal was dismissed by the department, vide order dated 16.06.2016.

4. The Respondent challenged his dismissal from service through a constitutional petition which was allowed in the aforementioned terms. Hence, this petition for leave to appeal.

5. The learned counsel for the petitioner submits that there was sufficient material on record to establish misconduct on the part of the Respondent. He maintains that the Respondent was a habitual offender and even previously he had been dismissed from service. However, he was restored under the orders of the High Court. He further submits that even after his reinstatement into service, his attitude did not improve and he continued to misbehave and threaten his senior officers in consequence of which he was suspended and after a transparent inquiry, from which the Respondent intentionally absented himself, he was dismissed from service.

6. We have heard the learned counsel for the petitioner at some length and carefully gone through the record. The terms and conditions of service of the Khyber Pakhtunkhwa Emergency Rescue Services are regulated by Khyber Pakhtunkhwa Emergency Rescue Services Regulations, 2015 and the matter of termination from service is dealt with by clause 43 of the same. Clause 45(2) of the Regulations provides that no employee shall be dismissed from service by an authority subordinate to that by which he was appointed. Further, Section 50 of the Regulations sets out acts/omissions that constitute misconduct on the part of the employees.

7. We find that the allegation against the Respondent was that he had sent abusive and threatening SMS messages to Director (Operations), DG (Operations) and the Administrative Officer and had generally indulged in disorderly behaviour. It was stated that he had violated the undertaking which he had given prior to joining Rescue Services as well as the West Pakistan Essential Services (Maintenance) Act, 1958. It was alleged that the Respondent had quarreled with his senior officers and thereafter had sent them threatening SMS messages. However, unfortunately neither any material by way of evidence was placed on record nor was the Respondent provided an opportunity to cross-

examine any witness that the petitioner may have produced. Further, there was no evidence that the Respondent had misbehaved with any body or refused to perform his duty as Emergency Medical Technician. So much so that no evidence even of obnoxious SMS messages allegedly sent to his senior officers was placed on record.

8. Where an employee is to be removed from service, which action obviously carries a stigma with it, he is entitled to due process which includes fair opportunity to defend himself, cross-examine the witnesses and produce evidence in his defence. Further, he must be confronted with the material on the basis of which he has been issued show cause notice. We find that the Respondent was deprived of his due process rights. He was not confronted with the material on the basis of which the show cause notice had been issued to him and he was not permitted to cross-examine the witnesses who were produced by the petitioner.

9. Even otherwise, the process followed by the petitioner was sketchy, one sided, non transparent and not supported even by the Regulations and the law. We therefore find that the High Court was justified in passing the impugned judgment and recorded valid and cogent reasons for doing so. The learned counsel for the petitioner has not been able to persuade us to hold otherwise or to interfere in

the impugned judgment, which is based upon the record and correct application and interpretation of law on the subject.

10. For reasons recoded above, we do not find any merit in this petition. The same is accordingly dismissed. Leave to appeal is refused.

JUDGE

JUDGE

ISLAMABAD.
22.02.2019
Not Approved For Reporting
ZR/*