

IN THE SUPREME CO-URT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Nasir-ul-Mulk, HCJ
Mr. Justice Amir Hani Muslim
Mr. Justice Ijaz Ahmed Chaudhry

Civil Appeals No.1122, 1123, 1107 of 2013
& 173 and 174 of 2015.

(On appeal from judgment dated 9.5.2013 of the Peshawar High Court, Peshawar, passed in W.Ps.No.2987, 2764 of 2011 & 818-P/2012). And against judgment dated 10.9.2014 of the Peshawar High Court, Abbottabad Bench, passed in W.Ps.No.3219 & 475-P of 2014).

The Commandant, Khyber Pakhtunkhwa Constabulary,
Headquarters Peshawar and another. ...Appellants.
(in all Appeals)

VS

Muhammad Nasir and others. (in C.A.No.1122/2013).

Sarad Khan and others (in C.A.No.1123/2013).

Muhammad Arif and others (in C.A.No.1107/2013).

Najeebullah and others (in C.A.No.173/2015).

Zakirullah and another (in C.A.No.174 of 2015)

...Respondents.

For the Appellants:

Ms. Shireen Imran, ASC.
Syed Rafaqat Hussain Shah, AOR.
(in C.As.No.1122, 1123 and 1107 of 2013).

Mian Shafaqat Jan, ASC.
Mr. M.S. Khattak, AOR.
(in C.As.No.173 & 174/2015).

For the respondents:

1-40 in C.A.No.1122/2013)
1-34 in C.A.No.1123/2013)

Hafiz S.A. Rehman, Sr.ASC.

1-18, 20-25, 27, 28, 30, 31
33, 35, 37, 38, 40, 41, 43-51,
53-65 in C.A.No.173/2015
and for Respondent No.1 in
C.A.No.174/2015).

Mr. Abdul Latif Afridi, ASC.

Date of hearing:

31.3.2015.

JUDGMENT

AMIR HANI MUSLIM, J. – The relevant facts for the purpose of disposal of these Appeals are that the Appellants were posted in different Platoons of Frontier Constabulary which were deployed in different areas of F.R Peshawar and F.R Kohat. They were dismissed from service on the allegations of insubordination and cowardice. The Respondents filed Appeals before the Federal Service Tribunal, Islamabad, which were allowed, by various judgments passed on different dates and they were reinstated in service with direction to the Appellants to hold de novo inquiries against them and conclude the same within four months, providing them full opportunity of hearing.

2. After receipt of the judgments of the Federal Service Tribunal, the Appellants without formally reinstating the Respondents, conducted de novo inquiry in the light of directions of the Tribunal and dismissed all the Respondents from service. The record shows that a second de novo inquiry upon the direction of the Tribunal was conducted against some of the Respondents, but they too were dismissed. The record further reveals that even 5th de novo inquiry was conducted against some of the Respondents, who were dismissed after such inquiries.

3. Feeling aggrieved, this time the Respondents approached the High Court, pleading therein that the orders of dismissal from service were illegal and passed without affording them opportunity of hearing. The learned High Court allowed all the Writ Petitions holding as under:-

“In case in hand, no doubt serious allegation were levelled against the Petitioners but the standard of proof as well as

the procedure adopted by the respondents, which is otherwise too noticeable, from the comments filed by respondents before this Court, without proper documentation and proper and elaborate answer to the objections raised by the petitioners in their writ petitions give no other reference but to hold that dismissal orders resulted into miscarriage of justice. The remand of these writ petitions would serve no good purpose too as respondents have already conducted a number of inquiries against the petitioners and another de novo inquiries would do nothing except to increase more agonies while petitioners have already suffered for more than four years which was a sufficient punishment for any lapses on their part (if any).

30. This while allowing these writ petitions, we set aside the impugned orders of dismissal of the petitioners from their services and order their re-instatement into service from the date when they were dismissed with all consequential benefit of the posts from the said date except the salary as there is no proof that petitioners remained jobless for the whole duration of their dismissal.

4. The Appellants challenged the judgments of the learned High Court before this Court and leave was granted in these appeals, *inter alia*, to consider whether the Respondents are Civil Servants. Hence these Appeals.

5. The learned Counsel for the Appellants has contended that the Respondents are Civil Servants and the jurisdiction of High Court was barred under Article 212 of the Constitution. He submitted that once the Respondents had obtained relief from the Federal Service Tribunal, they could not have approached the High Court for the same relief. He next contended that the findings of the High Court were erroneous on the point that the Appellants had failed to comply with the provisions of Rule 18 of the North West Frontier Constabulary Rules, 1958. In support of his

submissions, he has relied upon the case of I.G Frontier Corps and others vs Ghulam Hussain (2004 SCMR 1397).

6. On the other hand, the learned Counsel for the Respondents have contended that the Respondents are not Civil Servants and their terms and conditions of service are regulated by the North-West Frontier Constabulary Act, 1915, and the Rules framed there-under. They contended that the learned High Court did have the jurisdiction to adjudicate upon the matters relating to terms and conditions of service of the Respondent. They next contended that the Appellants had recorded findings in violation of the procedure prescribed under Rule 18 of the North West Frontier Constabulary Rules of 1958 (hereinafter referred to as the Rules of 1958), therefore, the learned High Court was justified in ordering their reinstatement.

7. The Respondents' Counsel next contended that the Appeals are barred by time and should have been dismissed on the point of limitation, as the grounds taken for condonation of delay are not plausible.

8. We have heard the learned Counsel for the parties at length and have perused the record. The Appellants are not Civil Servants as their terms and conditions of service are regulated by the provisions of the North West Frontier Constabulary Rules of 1958. The case law cited by the learned Counsel for the Appellants is not relevant after the judgment of this Court in the case of Muhammad Mubeen-us-Salam and others vs. Federation of Pakistan (PLD 2006 SC 602), where this Court has held that the status of a Civil Servant cannot be conferred on an employee of the organization by a deeming clause which has its own statutory service Rules. The terms and

conditions of service of the Respondents are regulated by the Act of 1915 which authorizes the Appellants to frame Rules. The Rules were framed in 1958 and are duly notified which regulates the terms and conditions of service of the Respondents. The plea of the Appellants that the Respondents are Civil Servants is without force in view of the judgment in the case of Muhammad Mubeen-us-Salam and others (supra)

9. The contention of the learned Counsel for the Appellants that proper procedure was followed while dismissing the Respondents from service, we have examined the procedure provided in Rule 18 (*ibid*) and the material brought on record by the parties. The orders which were impugned before the learned High Court are indicative of the fact that procedure as defined in Rule 18 of the Rules of 1958 was not followed. Even the learned High Court has observed in the impugned judgment that *de novo* inquiries were conducted by the Appellants without following the procedure provided in Rule 18 of the Rules of 1958. Once the learned High Court has held that the procedure prescribed in Rule 18 (*ibid*) has not been followed while dismissing the Respondents from service, it should have remanded the matter to the department after reinstating the Respondents in service for *de novo* inquiry.

10. We, therefore, while partly allowing these Appeals remand the matters to the departmental Authority of the Appellants to hold *de novo* inquiry after reinstating the Respondents in service, by strictly following the procedure provided in Rule 18 of the Rules of 1958 and pass appropriate orders within four months from the date of communication of this judgment.

11. Since the points raised in the Appeals are of public importance, therefore, the delay in filing the Appeals is condoned on the grounds taken in the Applications for condonation of delay. The above are the reasons for our short order of even date which reads as under:-

“For reasons to be recorded later, these appeals are partially allowed and the impugned judgments of the High Court are set aside to the extent of setting aside the order of dismissal of the respondents by the Commandant Frontier Constabulary. However, since the procedure laid down in Rule 18 of the NWFP Frontier Constabulary Rules, 1958, had not been followed during the inquiry conducted against the respondents, a de novo inquiry according to the said Rule may be conducted against the respondents. In order to hold the inquiry the respondents have to be reinstated. Since three inquiries have already been held, the fresh inquiry shall be concluded within a period of four months.”

Chief Justice

Judge

Judge

Islamabad the,
25th March 2015.

Approved for Reporting.

Sohail/**