

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed
Mr. Justice Qazi Faez Isa

CIVIL PETITION NOS.866-L & 867-L OF 2015

[On appeal against common order dated 06.03.2015 passed by the Lahore High Court, Multan Bench, Multan, in W.P.Nos.1712 & 5133 of 2014]

Chief Executive MEPCO & others

[in both cases]

...Petitioner(s)

VERSUS

Muhammad Fazil, etc

[in both cases]

...Respondent(s)

For the Petitioner(s)
[in both cases]

: Rao Muhammad Iqbal, ASC
Ms. Tasneem Amin, AOR (absent)

For Respondent No.1
[in both cases]

: Mr. Asad Munir, ASC
Ch. Akhtar Ali, AOR

Date of Hearing

: 18.04.2019

JUDGMENT

GULZAR AHMED, J.— The respondent Muhammad Fazil, in both petitions, was employed as an Assistant Lineman (BS-5) by the petitioner on 16.09.2000 on one-year contract. This contractual employment of the respondent was extended from time to time. The President Sports MEPCO wrote a letter to the Executive Engineer/Deputy Manager to spare the respondent from duty for cricket practice and he was accordingly spared from duty and it was done from time to time. On 18.07.2005, SDO/Assistant Manager wrote letter to the respondent to join duty but the respondent instead filed an application for medical leave for 112-days, from 29.06.2005 to 18.10.2005. This application for medical leave apparently was not accepted by the petitioners and ultimately the respondent joined service on 16.02.2007 when he was dismissed from service for being absent without sanctioned leave. The respondent thereafter served grievance notice on the

petitioners and then filed grievance petition in the Punjab Labour Court No.9, Multan (**Labour Court**). This petition was opposed by the petitioners. After hearing the matter, learned Labour Court vide its judgment dated 04.09.2013 accepted the respondent's grievance petition and set aside order of his dismissal but at the same time directed holding of inquiry against the respondent. Back benefits were not allowed by the Labour Court. The respondent challenged this judgment by filing Labour Appeal No.MN-1096 of 2013 before the Punjab Labour Appellate Tribunal No.2, Multan (**the Tribunal**) with the prayer that he be reinstated with full back benefits and the order of holding inquiry be set aside. The Tribunal vide its judgment dated 09.12.2013 came to the conclusion that the Labour Court ought to have passed order of reinstatement of the respondent and allowed the petitioners to hold *de novo* inquiry but as no *de novo* inquiry was held by them in terms of the order of the Labour Court, the respondent's appeal was allowed by setting aside order dated 04.09.2013 directing the petitioners to reinstate the respondent in service but without back benefits. Against the judgment dated 09.12.2013 of the Tribunal, both the petitioners and respondent filed writ petitions in the Lahore High Court, Multan Bench. The petitioners in its Writ Petition No.1712 of 2014 sought setting aside of judgment of the Tribunal and dismissal of the grievance petition. However, the respondent in his Writ Petition No.5133 of 2014 prayed for setting aside of the judgment of the Tribunal to the extent where it had refused him the grant of back benefits. Both these writ petitions were heard by a learned Judge in Chamber of the High Court and vide common impugned order dated 06.03.2015 the same were disposed of by modifying judgment of the Tribunal by extending all back benefits to the respondent. The petitioners were, however, allowed to initiate fresh proceeding, if so, authorized by law. Both these petitions for leave to appeal have been filed against the said impugned order.

2. It is contended by Rao Muhammad Iqbal, learned ASC for the petitioners that both the Labour Court as well as the Tribunal have concurrently passed order not allowing back

benefits to the respondent in exercise of their jurisdiction vested under the law and the High Court while exercising writ jurisdiction under Article 199 of the Constitution was not competent to upset such concurrent judgments and in this respect relied upon the case of Muhammad Tufail v. Divisional Forest Officer, Forest Division, Lahore & 3 others [1990 SCMR 1708] and Syed Kamaluddin Ahmad v. Federal Service Tribunal & others [1992 SCMR 1348].

3. On the other hand, Mr. Asad Munir, learned ASC for the respondent has contended that the High Court while dealing with the Constitution Petition under Article 199 of the Constitution has exercised its discretion in favour of the respondent by granting him back benefits and further the High Court has also found that the respondent was on sanctioned leave and on this ground justified grant of back benefits to the respondent.

4. We have heard learned counsel for the parties and have also gone through the record of the case.

5. We are cognizant that both the Labour Court and the Tribunal in their respective judgments have not allowed back benefits to the respondent and we understand that such decision of the two Courts below was mainly based upon the fact that the respondent though alleges to have made application for leave but without obtaining its approval went on leave and thus wilfully absented himself. The respondent's counsel has relied upon the leave application of the respondent filed at page 27 of CMA No.1933 of 2019, which is a form of application containing name of the respondent where he sought medical leave with effect from 29.06.2005 to 18.10.2005 (112-days) which seems to have been recommended by the Assistant Manager (Operation) but ultimately there is no order passed by the competent authority sanctioning this leave. We also note that this application is even not signed by the respondent as his signature does not appear on the application form. Apart from this document which obviously shows that there was no sanction of leave, the respondent on his own admission states that he has joined service after availing leave on 16.02.2007 which is mentioned in the judgment of the Labour Court to be the

date on which he came to report for duty after availing leave. We are unable to understand how the leave which respondent has initially claimed from 29.06.2005 to 18.10.2005 (112-days) came to be extended up to 16.02.2007 for neither the respondent has explained this position in his grievance petition nor the Labour Court has adverted to this issue and similarly the Tribunal and the High Court have also omitted to consider the same. Be that as it may, there was no sanction of leave to the respondent by the petitioner and there is no material on record to show that even the leave from 29.06.2005 to 18.10.2005 was at all sanctioned to the respondent. The respondent's very application for grant of leave was not signed by him and it also does not contain the order of the competent authority sanctioning the same. Thus, what appears to us is that the respondent has remained absent from duty not only for the period for which he sought leave but beyond that period, therefore, the High Court in its impugned order dated 06.03.2015 was not justified to hold that the respondent has remained on sanctioned leave. The learned ASC for the respondent has further contended that the only principle on which back benefits could be denied to the respondent is his gainful employment between the period of his dismissal from service to his reinstatement and there being no evidence available on the record showing that he was gainfully employed, back benefits could not be refused to him. In this respect he has made reference to the case of Sohail Ahmed Usmani v. Director General Pakistan Civil Aviation Authority & another [2014 SCMR 1843]. It is true that in the cited judgment this Court has allowed back benefits on the ground that the employee was not gainfully employed during the period of his dismissal up to his reinstatement. However, the employee being gainfully employed or not while remaining out of service has not always been a reason for granting or non-granting of back benefits rather it has been held by this Court in a number of cases that where the Court concerned reinstates the employee in service, it is not bound to grant back benefits automatically rather it is within the discretion of that Court to grant back benefits or not and exercise of such discretion could not be interfered with by the High

Court in exercise of writ jurisdiction unless it is shown that such discretion has been exercised without lawful authority and is of no legal effect. Such discretion has not been interfered with by the superior forum. In this regard, reference is made to the cases of Abdul Majid v. Chairman, WAPDA & 2 others [1990 SCMR 1458], Muhammad Tufail v. Divisional Forest Officer, Forest Division, Lahore & 3 others [1990 SCMR 1708], Humayun Badshah v. Habib Bank Limited & 3 others [1996 SCMR 1606] and Syed Kamaluddin Ahmed v. Federal Service Tribunal & others [1992 SCMR 1348]. The further principle is that where the Court or the Tribunal has jurisdiction and it determines specific question of fact or even of law, unless patent legal defect or material irregularity is pointed out, such determination cannot ordinarily be interfered with by the High Court while exercising jurisdiction under Article 199 of the Constitution. The very facts of the case amply demonstrate that the respondent himself was liable for being proceeded against by the department for that he remained on unsanctioned leave not only for the period he applied in the purported application but also beyond that period. Both the Labour Court and the Tribunal having exercised discretion in not granting back benefits to the respondent, such exercise of discretion could not be found to be without lawful authority and of no legal effect. Thus, the impugned order of the High Court cannot be sustained in the eye of law being in excess of the jurisdiction vested in it, which is liable to be set aside. We, therefore, convert this petition into an appeal and partly allow the same by setting aside the impugned order dated 06.03.2015 to the extent of granting back benefits to the respondent.

Bench-II
ISLAMABAD
18.04.2019
APPROVED FOR REPORTING
Hashmi

JUDGE

JUDGE