

Form No: HCJD/C.

**JUDGEMENT SHEET**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

**Case No: Writ Petition No.2479 of 2021**

**Ishfaq ul Mulk**

**Vs.**

**Federal Board of Intermediate and Secondary Education  
etc.**

**Petitioner by: Mr. Muhammad Shoaib Shaheen,  
Advocate.**

**Respondents by: Mr. Abdur Rahim Bhatti, Advocate.  
Mahmood ul Hassan,  
Superintendent (legal) FBISE.**

***Date of Decision: 24.01.2022.***

**AAMER FAROOQ, J.-** The petitioner was an employee of Federal Board of Intermediate and Secondary Education, Islamabad. He worked with the referred employer as Data Entry Operator. Disciplinary proceedings were initiated against him and even two criminal cases were filed by his employer (FIR No.14 and FIR No.16 of 1996 dated 04.08.1996 and 19.08.1996 under Sections 420, 468, 471 & 109 PPC read with Section 5(2) 47 of PCA, Federal Investigation Agency, Rawalpindi). The disciplinary proceedings initiated against the petitioner culminated in his dismissal from service vide office order dated 08.05.1997. However, he was acquitted of the criminal cases vide

judgment dated 07.05.2010. He filed an appeal against his order for dismissal from service on the basis that he has been acquitted of the charges which was dismissed on 09.06.2021. Hence, the petition.

2. Learned counsel for the petitioner, *inter alia*, contended that no reason has been provided in the impugned order for dismissal of the appeal. It was contended that after the acquittal of the petitioner from criminal charges there does not seem to be any justification for dismissal from service. It was contended that the reason tendered in the impugned order is that it has been filed with a delay of almost 13 years which is not tenable inasmuch as the petitioner was acquitted from the criminal cases only in 2010. It was contended that where such is the case laches are not attracted and the petitioner was well within his rights to approach the Department by way of appeal. Reliance was placed on the case titled **Ardeshir Cowasjee and 10 others v. Karachi Building Control Authority etc.** (1999 SCMR 2883) & **M. Anwar Siddiqui v. Lahore Development Authority etc.** (2009 SCMR 177).

3. Learned counsel for the respondents, *inter alia*, contended that the petition suffers from laches inasmuch as the appeal filed by the petitioner was dismissed way back in 2011. Reliance was placed on the case titled **State Bank of Pakistan through Governor and another v. Imtiaz Alooi Khan and others** (2012 SCMR 280), **Muhammd Din v. Abdul**

*Ghani and another* (2012 SCMR 1004), *Member (S&R)/Chief Settlement Commissioner, Board of Revenue, Punjab, Lahore and another v. Syed Ashfaq Ali and others* (PLD 2003 Supreme Court 132). It was further contended that the criminal proceedings and the departmental proceedings are separate and acquittal from criminal cases does not mean the same treatment in the other. Reliance was placed on the case *Shahid Masood Malik v. Habib Bank Ltd. and another* (2008 SCMR 1151), *Government of Pakistan through Secretary M/o Finance and others v. Asif Ali and others* (2007 PLC (C.S.) 271), *Government of NWFP through Secretary, Finance, Excise and Taxation Department Peshawar and 2 others v. Aurangzeb Ex-Driver* (2003 PLC (C.S.) 167).

4. Arguments advanced by the learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

5. The factual controversy of the matter has been mentioned with brevity hereinabove. The petitioner is aggrieved of dismissal from service and rejection of his appeal despite acquittal in criminal cases. It seems that he filed appeal against dismissal order in the year 2010 when he was acquitted of the charges which appeal was decided on 28.03.2011 and only second application/appeal was filed which was decided on 09.06.2021 leading to filing of the

instant petition. The language of the both orders is almost the same. In response to the query of the Court learned counsel for respondents No.3 & 4 submitted that the respondent Department is a statutory body and has adopted Government Servants (Efficiency and Discipline) Rules, 1973, hence limitation of 30 days period is applicable for filing of the appeal where any person is aggrieved of any disciplinary action. The principal stance taken in the impugned order of appellate authority that criminal proceedings and departmental proceedings are separate is just and proper and is in accordance with law. In this behalf case law relied upon by the learned counsel for the respondents is instructive. Reliance is placed on the case titled **Government of NWFP through Secretary, Finance, Excise and Taxation Department Peshawar and 2 others v. Aurangzeb Ex-Driver** (2003 PLC (C.S.) 167), **Government of Pakistan through Secretary M/o Finance and others v. Asif Ali and others** (2007 PLC (C.S.) 271) & **Shahid Masood Malik v. Habib Bank Ltd. and another** (2008 SCMR 1151). Moreover, this Court in W.P. No.2101 of 2011 decided as under:

*“Admittedly, the allegation in criminal case as well as the departmental proceedings is analogous. However, set of evidence comprising witnesses and the record are entirely different. The scope of function performed by Inquiry Committee and by the learned Trial Court was different. In such matters, law set by the Honourable Supreme*

*Court is that both the proceedings are separate from each other and relate too enforcement of distinct set of rules, therefore, conclusion of criminal case upon acquittal would carry no bearing on the disciplinary proceedings. In this regard, guidance is solicited from case titled as "Aurangzeb Supra" Relevant portion is reproduced as under:*

*"Even otherwise, the prosecution on criminal charge and departmental disciplinary proceedings were entirely different as one relates to the enforcement of criminal liability whereas the other is concerned with the service discipline, as such, acquittal on criminal charge had no bearing on disciplinary proceedings. Reference may be made to Amir Abdullah v. Superintendent of Police and others (1989 SCMR 333)."*

6. So far as the question of laches is concerned, it is the stance of the petitioner that earlier order was never communicated to the petitioner whereas learned counsel for the respondents vehemently argued that since the appeal was decided in 2011 the instant petition is barred by laches. Since there are two orders deciding the appeal of the petitioner and one is recent, it is assumed that only the subsequent one that came to light by intimation to the petitioner; however, no justification exists for passing the same when the earlier order was in field already. In the circumstances one cannot rule out maneuvering or engineering on part of the petitioner in connivance with the employees of the respondents. In any

case the impugned order does not suffer from any error of law or jurisdiction calling for interference in the present petition.

7. In view of the foregoing, the instant petition is without merit and is hereby dismissed.

**(AAMER FAROOQ)**  
**JUDGE**

\*M.Naveed\*

Uploaded by IT Department, IHC