

(Judgment Sheet)
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No.2468 of 2020

Fahad Faizan Khan
Versus
Federation of Pakistan and others

Petitioner by: Raja Saif Ur Rehman, Advocate.
Respondents by: M/s Hafiz Hifz-ur-Rehman and Sheikh Rizwan
Nawaz, Advocates.

Date of hearing: 04.02.2021

Ghulam Azam Qambrani, J.:-Through this petition, the petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan,1973 with the following prayer:-

- a) A declaration to the effect that the actions taken against the petitioner, suspension order dated 30.07.2020, charge sheet dated 06.08.2020, upon an anonymous complaint are liable to be set-aside.*
- b) A declaration to the effect that petitioner was not lawfully bound to obey the verbal order passed by then Commissioner Income Tax and placement of warning in his ACR dossier is against the law; and*
- c) Any other relief this court may deem appropriate be awarded in the interest of justice;*

2. Brief facts giving rise to the filing of the instant Writ Petition are that the petitioner namely Fahad Faizan Khan, joined the Income Tax Department as Income Tax Officer (BPS-16), on 18.5.2005 and was subsequently promoted as Assistant Commissioner Income Tax(BPS-17) on 28.12.2016; that when the petitioner joined as Assistant Commissioner, Income Tax at Wah Cantt., the officer, who was holding a dual charge of Audit Wing

namely Junaid Manzoor got affected because the Audit Wing was given to the petitioner. He started manipulating the situation by taking Commissioner Income Tax (Qaisra Fatima) into confidence and started knitting the web around the petitioner; that the then Commissioner Income Tax, Qaisra Fatima, who hailed from Wah Cantt had some personal interests in the said area, wanted Junaid Manzoor to remain incharge of the Audit Wing; that the normal tenure of posting at a station is three years, keeping in view the law laid down by the apex Court, but Junaid Manzoor in connivance with Commissioner Income Tax Qaisra Fatima managed premature transfer of the petitioner from Wah Cantt to Gujar Khan within a period of two months on 13.03.2017, from the date of joining. The petitioner, while posted as AC Income Tax at Gujar Khan, the then Commissioner Tax Qaisra Fatima directed the petitioner to depute an inspector level official to approach an individual, who was running a school and inquire into a tax matter of the said private individual. She also asked the petitioner to take pictures of said school and business of the individual. The petitioner requested the Commissioner to issue a direction in writing in this regard, so that, he may send the Inspector to Gujar Khan in an official capacity but the Commissioner annoyed that why the petitioner was asking for a written direction and forced him to follow her verbal orders. On account of refusal by the petitioner, his explanation was called and finally a warning was issued to him, which was placed in his ACR dossier as to why he failed to obey the verbal order of the then Commissioner Income Tax. Further stated that, Qaisra Fatima, then managed transfer of the petitioner from Gujar Khan to Rawalpindi and further as a punishment his services were permanently taken out from one Zone to another zone. The mala-fide of Commissioner Income Tax took a new turn when, she targeted the petitioner while he was working at City Zone Rawalpindi, and victimized him without any lawful justification; that a tax payer namely Mumtaz Ahmad, purchased a property and mentioned the amount of property as he had mentioned in the

Registered sale deed. The case with regard to the source of income was fixed before the petitioner, who after going through the record including registered sale deed, passed judgment in his judicial capacity and with an observation that the amount mentioned by the tax payer is same as he had mentioned in the registered sale deed. Before passing the above mentioned judgment, the petitioner had solicited guidance/opinion from his immediate senior/reporting officer in terms of Section 213 of Income Tax Ordinance, 2001 (hereinafter referred to as "ITO") and passed a well-reasoned judgment; that after the said decision, the concerned authorities by applying the provisions of Section 122 (A) of the ITO, took remedial action and imposed a huge tax upon the same tax payer, who challenged the decision by filing an appeal before the Commissioner Appeals-III (appellant authority) and the said authority indirectly upheld the verdict passed by the petitioner and tax imposed upon the tax payer was set-aside; that after the judgment passed by the petitioner, an anonymous application was filed, on the basis of same, following disciplinary actions were initiated against the petitioner:-

(i) A fact finding inquiry was initiated against the petitioner but the immediate boss of the petitioner exonerated him by recording statement in favour of the petitioner and gave protection to the judgment passed by the petitioner;

(ii) Merely on the basis of pendency of baseless allegation, the lawful promotion of the petitioner was withheld by deferring him;

(iii) After a period of one year the petitioner was suspended on 30.07.2020;

(iv) Charge sheet dated 6.8.2020 was issued to the petitioner with all baseless and bogus allegations,

3. The above actions necessitated the petitioner to invoke the constitutional jurisdiction of this Court, mainly on the grounds that the entire proposed action against him is based on an anonymous complaint, which by all means is against the law laid down by the

apex Court; that the tax imposed upon the tax payer, by way of passing a judgment against him, was an action taken by the petitioner in his judicial capacity, which action stands protected under the law, hence all the proceedings taken against the petitioner are nullity in the eyes of law; that the provisions of Sections 224 and Section 227 of the Income Tax Ordinance fully protect the petitioner; that the judgment passed by the petitioner was upheld by the Commissioner Appeal-III. Hence, the petitioner has prayed the reliefs detailed in para 1 above.

4. Learned counsel for the petitioner has argued that the entire impugned action is based on anonymous complaint submitted by some unknown person and that settled law on the subject is that no action on the basis of anonymous complaint can be taken; that show cause notice can be challenged by way of a Writ Petition. In support of his contention, reliance has been placed upon 2007 SCMR 703, 2010 YLR 2207 Lahore, and 1986 CLC 1136 Karachi; that jurisdiction of Federal Service Tribunal can be invoked only when final order is passed and not before that; that since no final order, determining the rights of the petitioner, has been passed, therefore, he cannot approach the Federal Service Tribunal; that the order passed by the petitioner in the tax matter of Mumtaz Ahmad was a judicial order, which was maintained by the Commissioner (Appeal-III), and the same was protected by the provisions of 224 and 227 of the ITO; that there is no provision in the ITO, whereby, the petitioner was bound to follow the verbal orders of Commissioner Income Tax, Qaisra Fatima; that the warning issued by her in this behalf was also unwarranted and liable to be quashed; that since the entire action against the petitioner was based on mala-fide and the petitioner was being victimized illegally by the department, therefore, instant petition is maintainable and prayed for setting aside of initiation of disciplinary action against the petitioner.

5. Conversely, learned counsel for the respondents argued that instant writ petition is not maintainable against the issuance of charge sheet; that jurisdiction of this Court is barred in terms of Article 212 of the Constitution; that since the matter pertains to terms and conditions of service of a civil servant, hence, only Federal Service Tribunal is competent in this behalf; that the department want to dig out the truth but the petitioner is not ready for the same; that Sections 224 and 227 of the ITO are not applicable and that mala-fide being alleged by the petitioner is a mixed question of law and facts, which can be proved through inquiry. Reliance was placed upon the judgments reported as **1999 PLC CS 209; 2017 PLC CS 943; 2014 PLC CS 386; 2012 PLC CS 1366; 2004 SCMR 149; 2020 SCMR 805& PLJ 2012 Lah. 259** and lastly, urged for dismissal of the petition.

6. Arguments of the learned counsel for the parties heard and perused the available record with their able assistance.

7. The basic proposition for determination of the issue in hand is whether the instant writ petition against issuance of show cause notice and charge sheet is maintainable or not?. The stance of the petitioner is that since whole action is based on an anonymous complaint, hence the same is completely tainted with mala-fide, therefore, the petitioner has no other alternate remedy under the law but to invoke the jurisdiction of this Court and that show cause notice, if based on mala-fide, can be challenged by way of writ petition.

8. On the contrary, stance of the respondents is that the petitioner is a civil servant and issuance of show cause notice, being part of terms and conditions of service, therefore, writ petition is not maintainable, in view of the bar contained in Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 and further that no writ lies against issuance of show cause notice and charge sheet; that the matter falls within the domain of the Federal Service Tribunal. Reliance in this regard is placed upon the cases reported

as "Muhammad Yasin and 3 others versus Government of the Punjab and 8 others" (2010 YLR 2207 Lahore) and "Haider Muljee Vs. Secretary, Government of Sindh" (1986 CLC 1136) and "Syed Khalid Mehmood Bukhari Vs G.M (HRO) PTCL and others" [2012 PLC (C.S) 1366.

9. I have minutely gone through the case laws supra produced on behalf of the respondents and am of the view that the same is not applicable to the facts and circumstances of this case, instead the facts of the case law cited at bar are distinguishable because in one of the same, the action was started on anonymous complaint. It is an admitted fact that in the instant case, disciplinary action was initiated against the petitioner in pursuance of an anonymous complaint, submitted by someone hiding his identity against the petitioner. Moreover, Chapter-II Sub-section 5 of Section 3 of the Public Interest Disclosures Act 2017, bars initiation of actions on the basis of anonymous and pseudonymous disclosures. It may be advantageous to reproduce the relevant provisions of law hereunder for ready reference:-

*(5) anonymous and pseudonymous disclosures shall
not be entertained by the competent authority*

It is thus settled law that no action can be initiated on the basis of any anonymous application. The wisdom behind the above provisions of law seems to be that if consequent upon an anonymous complaint, an action is started and ultimately, it is found that the complaint was false and baseless, then no action can be initiated by the aggrieved party against the person moving false complaint or disclosures and the aggrieved party had to suffer a lot of mental agony, embarrassment, humiliation and distress while passing through different phases of the disciplinary process in order to prove himself/herself to be innocent or proving that the contents of the anonymous complaint were bogus. The anonymous complaint is also never supported by an affidavit. Public energy and time is also wasted in making probe into the

anonymous disclosures. It is a matter of common knowledge that in our social set up, oftenly people move such false and frivolous applications only to malign their opponents or settle their personal grievances or to cause uncalled for embarrassment to the individual complained against. Since the action based on anonymous complaint is not recognized by the law, therefore, same cannot be allowed to prevail.

10. As discussed above, entertaining the anonymous disclosure is a violation of provisions of law supra, but even then the department opted to start disciplinary action against the petitioner, which infringed the fundamental rights of the petitioner, qua job security, hence, the impugned action can be challenged by way of Writ Petition.

11. In addition to above, the petitioner's claim is that Commissioner Income Tax, Qaisra Fatima was seriously biased against him, owing to his refusal to comply her verbal orders, detail of which has been reproduced above, and she has managed initiation of impugned proceedings. In order to appreciate this contention, I have scanned the record, which reveals that twice warnings were issued by Commissioner Income Tax, Qaisra Fatima to the petitioner, particularly with reference to Gujar Khan school incident and further that in the disciplinary proceedings initiated against the petitioner, she was nominated as Inquiry Officer, (however, subsequently she was changed on the objection of the petitioner). Moreover, the petitioner's stance is that he was so many times transferred from one station to another station i.e. Islamabad, Wah Cantt, Gujar Khan, and Rawalpindi etc., within a short span of time, which fact has also not been denied by the respondents. From both the above incidents, element of mala-fide on the part of the respondents is, *prima facie*, visible.

12. I am conscious of the fact that the petitioner is a civil servant and he should voice his grievance before the Federal Service Tribunal but simultaneously it is a fact that jurisdiction of Federal

Service Tribunal can be invoked against a final order, whereby things have been finally determined. In case law reported as "S.H.M Rizvi and 5 others versus Maqsood Ahmad and 6 others" (PLD 1981 Supreme Court 612), the august Supreme Court has defined the connotation of final order as under:-

"A final order has the distinction of determining the rights of the parties. Where any further step is necessary to perfect an order, in this case the disposal of the objections received or finalization of provisional seniority list the order cannot be taken to be final. An order may be final if it determines the rights of the parties, concludes the controversy so far as the particular authority or forum is concerned notwithstanding that such an order may be open to challenge in appeal etc.

13. In view of the above dictum laid down by the august Supreme Court of Pakistan, issuance of show cause notice in the background, does not amount to final determination of rights or issues, as the case maybe, therefore, the petitioner cannot voice his grievance before the Federal Service Tribunal, and there was no bar in approaching this Court, therefore, contention of the respondents, in this behalf, is repelled.

14. The petitioner's stance is that the order dated 30.11.2018 passed by him was a judicial order, which was upheld by the Commissioner (Appeal-III), therefore, on the basis of the same no action can be initiated against him. Perusal of record reveals that against the assessment order dated 30.11.2018, passed by the petitioner, remedial action was taken by the department and the amount of tax was enhanced vide order dated 20.5.2020. The aggrieved party filed an appeal before the Commissioner Appeal, which was allowed vide order dated 13.07.2020 and the case was remanded with the following observations:-

"The facts of the case are thoroughly discussed. The order has been passed on the basis that two out of the

ten sellers who state that the property was sold for Rs.140 Million and not for Rs.13 Million. Documents provided by the AR prove that the registered document shows the consideration of Rs.13 Million. Moreover, while getting transferred all ten sellers including these two informs, signed the affidavit for transfer of the said property. This affidavit is endorsement of the registered sale deed. Now if the two seller claim that the consideration was Rs.140 Million then they should either provide a binding document or and establish the transaction of Rs.140 Million. Since there is no evidence whatsoever that the deed was for Rs.140 Million, and/or that the appellant paid Rs.140 Million, therefore, the addition made in the impugned order is not found to be maintainable. It is further noted that the declared consideration of Rs.13 Million is also not accounted for while computing amount for addition under Section 111 of the ITO 2001”

In view of above, the case is remanded back with the direction to examine the facts of the case afresh, bring on record the evidence of receipts of Rs.140 Million by the appellant and then pass the order under section 122(1) In case this much receipts are not established, then the proceedings may be closed.”

15. It means that the order passed by the petitioner, on the basis of which, disciplinary action has been initiated against him was upheld by an appellate forum. The respondent has failed to place on record anything to establish that any next higher forum has declared the order passed by the petitioner to be illegal, mala-fide or against the record. This fact, *prima facie*, establishes that the order, on the basis of which impugned action has been initiated, against the petitioner, was legally and factually perfect, which do not call for commencement of disciplinary action that on the basis of an anonymous complaint.

16. For the aforesaid reasons, this writ petition is **accepted** and the impugned disciplinary action of initiation of disciplinary proceedings, having been initiated in sequel to an anonymous complaint, being in glaring violation of the provisions of Public

Interest Disclosures Act, 2017, is declared to be not in accordance with law and held to be without any lawful authority.

17. However, the department is at liberty to re-initiate the disciplinary proceedings, if there is any legal, tangible and concrete evidence of any misconduct on the part of the petitioner but not on the basis of anonymous complaint.

(GHULAM AZAM QAMBRANI)
JUDGE

Announced in open Court on this 25th day of February, 2021.

JUDGE

Rana M. If

Approved for reporting.