

Form No: HCJD/C-121.

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

Writ Petition No. 3469 of 2019

Abid Khan

Vs

Chairman, NADRA Islamabad, etc.

PETITIONER BY: Mr. Irshad Ahmed Zada Mohammad Zai,
Advocate.

RESPONDENTS BY: Mr. Khalid Ishaq, Advocate.

DATE OF DECISION: 03-09-2020.

ATHAR MINALLAH, CJ.- Through this

petition the petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 assailing imposition of major penalty of removal from service by the competent authority of National Database and Registration Authority (hereinafter referred to as the "**Authority**") under the National Database and Registration Authority Employees Service Regulations, 2002 (hereinafter referred to as the "**Regulations of 2002**").

2. The relevant facts of the case are that the petitioner had joined the Authority as Data Entry Operator on contract basis. His services were regularized in 2012. A criminal case

i.e. FIR no. 183, dated 19.07.2014, was registered at Police Station Nisata, District Charsadda, Khyber Pakhtunkhwa. The petitioner was one of the nominated accused in the aforementioned criminal case. However, instead of surrendering himself before the Investigating Officer or competent court, he preferred to become a fugitive from law. He remained fugitive till he was arrested in 2017. During this period he remained absent from his duties without intimation to or seeking approval from the competent authority. The Authority issued notice, dated 04.08.2016, but the petitioner did not respond. A public notice was also published in the daily newspapers on 28.08.2016. The competent authority after fulfilling the required codal formalities passed order, dated 28.10.2016, whereby major penalty of removal from service was imposed. The petitioner was arrested in 2017 and he was subsequently acquitted by the learned trial court vide judgment, dated 08.04.2019.

3. The learned counsel for the petitioner has contended that; the petitioner was forced to abscond due to reasons, which were beyond his control; the petitioner had sent an application whereby the competent authority was informed regarding reasons for his absence; another accused in the same case and under similar circumstances was reinstated into service vide judgment, dated 21.07.2020, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar. The learned counsel has placed reliance on the judgments reported as "*Dr. Muhammad Aslam vs.*

Government of N.W.F.P through Secretary, Food, Agriculture, Livestock and Cooperative Department, Peshawar and 2 others" [1998 SCMR 1993], "*Akhtar Ali vs. Director, Federal Government, Educational Institution FGET DTA, Rawalpindi and others"* [2011 PLC (C.S) 808], "*Muhammad Tariq Malik vs. Pakistan through Secretary Establishment Division and 2 others"* [PLD 2014 Islamabad 38], "*Chairman Agricultural Development Bank of Pakistan and another vs. Mumtaz Khan"* [PLD 2010 Supreme Court 695], "*Zahid Rashid vs. Federation of Pakistan through Secretary, Establishment Division, Government of Pakistan, Islamabad and another"* [2003 SCMR 215] and Suo Motu Case Re: "*the issue as to whether compounding of an offence under section 345 Cr.P.C. amounts to acquittal of the accused person or not.*" [PLD 2018 Supreme Court 703] in support of his contention that the petitioner was not at fault and, therefore, his dismissal from service was illegal and void.

4. The learned counsel who has appeared on behalf of the respondent Authority has argued that; the petitioner had absconded and did not join his duties from 2014 till he was acquitted by a competent court in 2019; the petitioner had committed misconduct because he unauthorizedly remained absent from duty; the departmental proceedings were regarding his unauthorized absence from duty and not in relation to the criminal case registered against the petitioner.

5. The learned counsels have been heard and the record perused with their able assistance.

6. The emphasis of the learned counsel for the petitioner regarding acquittal of the latter in the criminal case, is of no consequence and misconceived in the facts and circumstances of the case in hand. The petitioner was a regular employee of the respondent Authority and his unauthorized absence from 2014 till 2019 definitely constituted misconduct. As a regular employee, he was required to inform the competent authority and should have sought leave but he preferred to become a fugitive from law. By opting to become an absconder and thereafter remaining absent from duty without intimation or permission, the petitioner had voluntarily exposed himself to disciplinary proceedings. The proceedings were regarding unauthorized absence from duty and not his involvement in a criminal case. The petitioner's acquittal was, therefore, of no consequence in the matter in hand. The disciplinary proceedings and orders passed pursuant thereto have not been found to suffer from any legal infirmity. The unauthorized absence for a considerably long time is admitted. No plausible explanation in order to justify the absence could be given by the petitioner to the satisfaction of the competent authority.

7. For the above reasons, this petition ^{is} devoid of merit and, therefore, accordingly dismissed.

(CHIEF JUSTICE)

Saeed.