

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

ICA No.621 of 2014

Managing Director PPRA & 2 others

Versus

Muhammad Kamran

Appellants By	:	Mr. Muhammad Umair Baloch, Advocate.
Respondent By	:	Mr. Riaz Hanif Rahi, Advocate
Date of Hearing	:	11.04.2022

ARBAB MUHAMMAD TAHIR, J: The instant Intra Court Appeal is arising out of judgment dated 05.11.2014, passed by learned Judge-in-Chambers, whereby Writ Petition No.4037 of 2013 filed by the respondent was allowed in following terms:-

“12. At this verge, stance taken by the respondents that petitioner was directly employed as such his appointment comes within the ambit of initial appointment is not correct therefore he should not have been treated like the case in hand. The allegations levelled in show cause notice have sufficiently been replied in detail by the petitioner. **These allegations are of such nature that same require scrutiny through inquiry conducted by following the procedure laid down in Chapter-13 of the said Regulations. Therefore, in my humble view, issuance of show cause notice just to oust the petitioner is tainted with malafide, hence proceedings initiated thereafter are annulled being illegal.** Consequently, the impugned order dated 26.08.2013 regarding termination from service is hereby set aside. However, the Department is at liberty to initiate departmental proceedings against the petitioner, if they have an intention to further proceed against him by following the procedure laid down under Chapter-13 of the said Regulations.

13. In view of above narrated facts and legal position, instant petition is allowed in above terms.”
[Emphasis added]

2. Relevant facts of the instant matter are, that the respondent was appointed as Cashier on contract basis in the Public Procurement Regulatory Authority, Islamabad (“PPRA”) on

15.09.2003. The contract had been extended from time to time, ultimately his services alongwith other contractual employees were regularized vide Office Order dated 02.04.2012. On 25.06.2013, respondent was served with Show Cause Notice ("**S.C.N.**") on the allegations of misconduct, involvement in criminal case, insubordination and willful absence from duty. The respondent replied to the S.C.N. on 01.07.2013. After which he was afforded opportunity of personal hearing vide letter dated 20.08.2013, and so his services were finally terminated vide order dated 26.08.2013. The respondent assailed his termination through W.P. No.4037 of 2013, which was allowed vide impugned judgment dated 05.11.2014, hence instant appeal.

3. Learned counsel for the appellants-PPRA argued that at the relevant time, respondent had been on probation and his services were not regularized, therefore, the department had every right to terminate his services on the basis of unsatisfactory performance, absence from duty and involvement in criminal case; that the respondent was afforded opportunity to adduce his version and was also given personal hearing and thereafter considering the nature of the allegations, regular inquiry was dispensed with, therefore, impugned judgment is liable to be set aside.

4. On the other hand, learned counsel for the respondent resisted the above submissions by contending that no regular inquiry pursuant to the impugned judgment has since been conducted despite lapse of more than seven years. despite of the fact that no injunctive order had been operating in the instant appeal against the appellants; that respondent is a regular employee and is entitled to be treated in accordance with law while the allegations made basis to oust the respondent could not be substantiated without regular inquiry, therefore, appeal is liable to be dismissed.

5. We have heard the learned counsel for the parties and have gone through the record.

6. It is evident from record that the respondent joined the appellant-department on contract basis on 15.09.2003. His services alongwith other employees were regularized on 02.04.2012. At the relevant time, he had served the petitioner

department for more than eight and a half years. After his regularization in the year 2012, after lapse of more than a year on 26.06.2013, he was served with S.C.N. on the allegations of, *misconduct, insubordination, involvement in criminal case, indulging in business in violation of conduct rules and wilful absence from duty*. The respondent refuted the allegations by filing reply to S.C.N. and was finally terminated vide order impugned in the writ petition.

7. It is significant to note that the appellant-department in parawise comments (in Para-vii) had taken the stance that "*his termination was made in accordance with law i.e. Civil Servant Act, 1973, Section (11)*" *Termination of Service (1) the service of a Civil Servant may be terminated without notice-(i) during the initial or extended period of his probation.*" It is thus obvious that the punitive action against the respondent was taken under the Civil Servants Act, 1973 by treating it as a Civil Servant but no regular inquiry was conducted under the Efficiency & Discipline Rules, 1973.

8. In order to see as to whether the exception exercised by the appellant-department to dispense with regular inquiry was just and proper, it is essential to go through the contents of the S.C.N. which read as under:-

- i. "You, Mr. Muhammad Kamran, were appointed as Cashier in this Authority on contract basis on 15th September, 2003 and regularized on 17th January, 2012. Till your regularization of service in this Authority, your conduct remained very questionable. You were kept under supervision repeatedly due to your misconduct, insubordination, casual attitude, and fighting with other officials. You were issued warning to mend your ways.
- ii. On 23-08-2012 you were arrested by the local police at Sargodha in a criminal case in FIR No.512 dated 23.08.2013 under Section 392/376/401/411 PPC PS Cantt, which is a very serious matter being a Government Servant.
- iii. As per police report stolen cheque books, ATM Card and a weapon were recovered from you during investigation. The registration of FIRs and accusations neither justifies your position in PPRA nor in civil service.

- iv. You have admitted your involvement in business without any information & approval which is violation of the Government's Conduct Rules. Moreover, the nature of business is also not known to this Authority on account of which you were resultantly arrested by the police.
- v. On 23-08-2013, you left the office for Sargodha without taking the outstation leave. Similarly, you remained absent without any information to PPRA till 19-02-2013 when Sargodha police confirmed your arrest on the initiative taken by PPRA. Your uncle applied on your behalf for your leave and you hide the facts."

9. The above charge-sheet contains several allegations like misconduct, insubordination, casual attitude, involvement in criminal case, involvement in business without intimation and approval and willful absence from duty. The respondent submitted exhaustive reply to the S.C.N. and thereafter he was removed from service vide order impugned in the writ petition in following terms:-

"Reference your reply to the Show Cause Notice of even number dated 25th June, 2013, and the personal hearing accorded to you by the Managing Director on 20th August, 2013.

2. Your reply to the above Show Cause Notice has not been found satisfactory. You have failed to deny and rebut the allegations leveled against you and failed to defend your position during the personal hearing. Your replies to the allegations are neither relevant nor convincing.

3. You have ceased to be efficient. Therefore, on the basis of charges leveled against you, your service is terminated with immediate effect."

10. It is evident from the above order that the same is short of logical reasons, not based upon documentary evidence which can be termed as legally not sustainable, rather the respondent was ousted from service by simply discarding his version contained in reply to S.C.N. In terms that he failed to deny and rebut the allegations leveled against him, and remained unable to defend his position during the personal hearing. In-addition, his replies to the allegations were found neither relevant nor convincing. There is no mention of any documentary evidence on the basis of which action

impugned in writ petition had been taken against the respondent by the appellant department.

11. It is settled principle that in case the departmental authorities came to the conclusion that there is sufficient documentary evidence on record, enough to establish the charge, it can, **after recording reasons**, which shall be justiceable, dispense with the inquiry in the interest of expeditious conclusion of departmental proceedings. The Courts can always re-examine the reasons assigned by the departmental authority for dispensing with the requirement of regular inquiry, and if such reasons are not found cogent and legally sustainable, the Court has all powers and is not debarred from sending the matter back to the department to hold a regular inquiry. Reliance is placed upon case of "Chief Post Master Faisalabad, GPO and another v. Muhammad Afzel" (2020 SCMR 1029).

12. In the circumstances of the case, regular inquiry was essential as observed by the learned Judge-in-Chambers and where regular inquiry is necessary to establish the charge, departure from requirement of regular inquiry would amount to condemning a person unheard as laid down by the Hon'ble Apex Court in the case of "Abdul Qayyum v. D.G. Project Management Organization, JSHQ Rawalpindi and two others" (2003 SCMR 1110").

13. It is also noticed that despite lapse of more than seven years, no regular inquiry has yet been conducted against the respondent pursuant to the impugned judgment despite the fact that no injunctive order had been in field. The respondent has been in service since the passing of the impugned judgment.

14. From what has been discussed above, impugned judgment appears to be well reasoned and does not call for any interference. Consequently, instant appeal fails and is accordingly **dismissed**. There is nothing stopping the appellant from conducting a regular inquiry against the respondent.

(MIANGUL HASSAN AURANGZEB) (ARBAB MUHAMMAD TAHIR)
JUDGE JUDGE