

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.2823/2018

Zafar Iqbal

Versus

Federation of Pakistan through Secretary, Inter Board Committee of
Chairman and another

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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10.05.2019

Mr. Muhammad Asif Gujjar, Advocate for the petitioner

Mr. Hassan Rashid Qamar, Advocate for respondent No.1

Malik Tariq Mahmood Noon, learned Deputy Attorney-General

Through the instant writ petition, the petitioner, Zafar Iqbal, impugns the order dated 08.05.2012, whereby the Inter Board Committee of Chairmen ("I.B.C.C.") terminated the petitioner's services due to unsatisfactory conduct. Since the said termination was with immediate effect, the petitioner was given 15 days pay in lieu of advance notice under clause (iv) of the terms and conditions of his employment contract.

2. Learned counsel for the petitioner submitted that vide letter dated 21.07.2005, the petitioner was appointed as Upper Division Clerk on contract basis by the I.B.C.C.; that on 30.07.2005, the petitioner assumed the charge of his duties at I.B.C.C. Sub-office, Peshawar; that vide office order dated 24.09.2010, the petitioner's services were regularized with effect from 01.07.2008; that vide the impugned office order dated 08.05.2012, the petitioner's services were terminated on the allegation of unsatisfactory conduct; that subsequently, F.I.R. No.506, dated 23.08.2013, under Sections 302, 324, and 34, P.P.C. was registered against *inter-alia* the petitioner at

Police Station Margalla, Islamabad; that the said F.I.R. was registered on the complaint of Mir Wais Khan; that the allegation against the petitioner was that he had killed the grandson of Muhammad Ramzan Achakzai, who was the Secretary of I.B.C.C.; that vide judgment dated 28.03.2018, passed by the Court of the learned Sessions Judge, Islamabad, the petitioner was acquitted in the said case; that upon the petitioner's acquittal, he was entitled to be reinstated in service with all consequential benefits; and that till date, I.B.C.C. had not responded the petitioner's application for the restoration of his services as Attestation Clerk at Regional Office, Lahore.

3. Learned counsel for the petitioner further submitted that against the order dated 08.05.2012, whereby the petitioner's services were terminated, he had preferred a departmental appeal, which was allowed, vide order dated 13.07.2012; that the appellate authority had ordered for a *de-novo* inquiry to be conducted against the petitioner within a period of six weeks; that although a *de-novo* inquiry was conducted against the petitioner, but at no stage the outcome of the *de-novo* inquiry was communicated to the petitioner; that after the *de-novo* inquiry, no order has been issued for the termination of the petitioner's services; and that in such circumstance, I.B.C.C. is bound to allow the petitioner to perform his duties and to pay his un-paid salaries and benefits. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein. In making his submissions, learned counsel for the petitioner placed reliance on the judgments

reported as 2015 PLC (C.S.) 1320 and 2017 SCMR 2010.

4. On the other hand, learned counsel for respondent No.1 submitted that the office order dated 24.09.2010, whereby the petitioner claims that his services were regularized, is a forgery and does not exist in the record of I.B.C.C.; that the petitioner's services had never been regularized, and he had remained a contractual employee at all material times; that although the appellate authority had ordered for *de-novo* inquiry to be conducted against the petitioner, the inquiry committee in the *de-novo* inquiry report dated 17.12.2012, had recommended that the competent authority may pass "*an appropriate penalty order against the accused*"; that after the said recommendation, an order to impose a penalty on the petitioner had not been passed since he had been arrested in case F.I.R. No.506, dated 23.08.2013, and had remained in jail from 2013 to 2018; and that since the charges against the petitioner had been fully established in the *de-novo* inquiry, he was not entitled to be reinstated in service. Learned counsel for respondent No.1 prayed for the writ petition to be dismissed.

5. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

6. The record shows that vide letter dated 21.07.2005, the petitioner was appointed to the post of Equivalence and Attestation Clerk at I.B.C.C. Sub-office, Peshawar on contract basis for a period of two years. On 30.07.2005, the petitioner assumed the charge of his duties.

7. While the petitioner was posted at the I.B.C.C.'s Sub-office at Lahore, he was accused of being involved in embezzlement and

corruption. As per the statement of allegations dated 27.06.2011, the petitioner was accused of preparing fake fee *challan* receipts of Allied Bank, B.I.S.E. Peshawar and accepting bribes/gratification from candidates for processing equivalence and attestation cases. On 30.06.2011, the petitioner submitted his reply to the statement of allegations against him.

8. Vide office order dated 27.06.2011, the petitioner's services were placed under suspension. Inquiry proceedings under the Government Servants (Efficiency and Discipline) Rules, 1973, were conducted against the petitioner and in this regard, vide order dated 22.07.2011, the petitioner was directed to appear before the inquiry committee on 27.07.2011 to present his defence. On the said date, the petitioner submitted replies to the questions that had been posed to him. The inquiry committee, in its report dated 12.08.2011, recommended the award of major penalty of termination of contract to be imposed on the petitioner. On 12.12.2011, the petitioner was issued a notice to show cause as to why the penalty of "*dismissal from service*" may not be imposed on him. After the petitioner submitted his reply to the said show cause notice, I.B.C.C., vide office order dated 08.05.2012 terminated the petitioner's service contract.

9. Against the said order dated 08.05.2012, the petitioner preferred a departmental appeal. On 09.05.2012, the petitioner was afforded an opportunity of hearing by the appellate authority. Vide order dated 13.07.2012, the appellate authority ordered that a *de-novo* inquiry be conducted against the petitioner within a period of six weeks.

10. Vide I.B.C.C.'s order dated 26.07.2012, a new inquiry committee was constituted. After this, I.B.C.C., vide letter dated 30.08.2012, requested the Director (Technical), Federal Investigation Agency, Islamabad ("F.I.A."), to examine the *challan* receipts that had been declared as fake by the bank and to intimate whether or not they contained the petitioner's signatures. There is nothing on the record to show that the said letter was responded to or whether the F.I.A. had reported that the bank *challans* had the petitioner's signatures on them.

11. The inquiry report dated 17.12.2012 shows that the charges against the petitioner had been established and he was found guilty of the charges levelled against him. The inquiry committee recommended that the competent authority may impose an appropriate penalty on the petitioner and recover from him the loss caused to the national exchequer.

12. It is an admitted position that at no material stage after the issuance of the said inquiry report dated 17.12.2012 was any order passed by the competent authority imposing any penalty on the petitioner. Learned counsel for I.B.C.C. confirms that no such order was in the record of I.B.C.C.

13. On 23.08.2013, F.I.R. No.506 under Sections 302, 324, and 34, P.P.C. was registered against *inter-alia* the petitioner at Police Station Margalla, Islamabad. The said F.I.R. was registered on the complaint of Mir Wais Khan. The allegation against the petitioner was that he had killed the grandson of Muhammad Ramzan Achakzai, who was the Secretary of I.B.C.C., and had passed the initial order of the termination of the petitioner's services. Vide judgment dated 28.03.2018, passed by the Court of the learned

Sessions Judge, Islamabad, the petitioner was acquitted in the said case.

14. On 14.07.2018, the petitioner filed the instant writ petition seeking the restoration of his services and the payment of his unpaid salaries/benefits.

15. As regards the question whether or not I.B.C.C.'s office order dated 24.09.2010, whereby the petitioner's services were regularized, is a disputed question of fact which cannot be resolved without the recording of evidence. Even if the said letter is not to be taken into consideration by this Court, I.B.C.C.'s letter No.F.1-35/06/Admn/ 1236, dated 17.09.2009, shows that in pursuance of Establishment Division's office memorandum dated 29.08.2008, the services of fourteen employees working in I.B.C.C. on contract basis were regularized with effect from 01.07.2008. The petitioner's name appeared at serial No.9 in the list of the employees whose services were regularized. Furthermore, the service certificate dated 01.01.2009 issued by I.B.C.C. shows that the petitioner was a regular employee of I.B.C.C. Learned counsel for I.B.C.C. did not question the authenticity of I.B.C.C.'s said letter dated 17.09.2009 or the service certificate dated 01.01.2009.

16. The petitioner had remained incarcerated between 2013 and 2018. After the petitioner's acquittal in the above- mentioned criminal case, he had applied to I.B.C.C. for his services to be restored and his unpaid salaries/benefits to be paid to him.

17. Acquittal in a criminal case would not constitute a bar for the initiation of the disciplinary proceedings. Criminal proceedings

and departmental proceedings against the civil servant are entirely different as one relates to the enforcement of criminal liability and other is concerned with service discipline. There is catena of case law in support of this, including the following judgments:-

- i) Amir Abdullah Vs. Superintendent of Police (1989 SCMR 333)
- ii) Deputy Inspector General of Police Vs. Anisur Rehman (PLD 1985 SC 134)
- iii) Muhammad Ayub Vs. Chairman Electricity Board WAPDA, Peshawar (PLD 1987 SC 195)
- iv) Talib Hussain Vs. Anar Gul Khan (1993 SCMR 2177)
- v) Rashid Mehmood Vs. Additional Inspector-General of Police (2002 SCMR 57)
- vi) Khalid Dad Vs. Inspector General of Police (2004 SCMR 192)
- vii) Syed Muhammad Iqbal Jafri Vs. Registrar Lahore High Court, Lahore (2004 SCMR 540)
- viii) Muhammad Shafique Vs. Deputy Director Food (2005 SCMR 1067),
- ix) Syed Aqleem Abbasi Jaffari Vs. Province of Punjab through Secretary, Irrigation Department (2005 SCMR 1901),
- x) Falak Sher Vs. Inspector-General of Police, Lahore (2005 SCMR 1020).
- xi) Sami Ullah Vs. Inspector-General of Police (2006 SCMR 554).
- xii) Asif Mehmood Butt Vs. Regional CEO, NBP (2011 PLC (C.S.) 1462).

18. I.B.C.C. in paragraph 7 of its written comments has pleaded that the petitioner's representation had been finally dismissed. This pleading is contrary to the record inasmuch as the petitioner's departmental appeal against the order dated 08.05.2012, whereby the petitioner's services were terminated, had been allowed by the appellate authority vide order dated 13.07.2012 by ordering a *de-novo* inquiry to be conducted against the petitioner. After the *de-novo* inquiry, there is no order of the competent authority removing or dismissing the petitioner from service. I.B.C.C.'s pleading in paragraph 11 of the written comments that the petitioner was terminated vide letter dated 30.05.2012 is also

not correct as no such letter has been brought on the record.

19. Through C.M. No.1456/2019, I.B.C.C. has brought on record its letter dated 30.05.2018 which shows that the petitioner had submitted an application for the restoration of his services as Attestation Clerk in Regional Office, Lahore. Perusal of the said letter shows that after the petitioner's services were terminated, vide I.B.C.C.'s order dated 08.05.2012, the petitioner had preferred a departmental appeal. During the pendency of the said departmental appeal, the petitioner had filed writ petition No.1500/2012 before this Court. The said petition was disposed of vide order dated 25.05.2012 directing the Secretary, Ministry of Inter Provincial Coordination to decide the petitioner's appeal/representation within one month. Apparently, the petitioner had also filed criminal original petition No.417-W/2013 before this Court since the petitioner's departmental appeal had not been decided within a period of one month of the passing of said order dated 25.05.2012. Since the petitioner's departmental appeal had been decided by the appellate authority on 13.07.2012, the said criminal original petition was dismissed by this Court, vide order dated 21.11.2016.

20. In I.B.C.C.'s said letter dated 30.05.2018, the position taken is that the order for terminating the petitioner's services had attained finality and therefore, his services could not be restored. This is a total fallacy to say the least. It may be reiterated that after the *de-novo* inquiry, there is no order passed by a competent authority terminating the petitioner's services or for the petitioner's dismissal or removal from service. With the order for a *de-novo* inquiry being passed

by the appellate authority on 13.07.2012, the earlier order dated 08.05.2012, whereby the petitioner's services were terminated, stood washed out. Mere recommendations of an inquiry committee cannot be equated with an order passed by a competent authority against the petitioner.

21. The said order dated 08.05.2012 could not be made the basis for not restoring the petitioner's services or paying his unpaid salaries/benefits.

22. The I.B.C.C.'s said letter dated 30.05.2018 has not been communicated to the petitioner, but to a Section Officer in the Ministry of the Inter Provincial Coordination. The grounds set out in the said letter for not restoring the petitioner's services do not appeal to reason.

23. Since till date, the petitioner's application for the restoration of his services and the payment of his unpaid salaries/benefits has not been graced with the reply by I.B.C.C. to him, this petition is disposed of with the direction to I.B.C.C. to decide the petitioner's pending application strictly in accordance with the law and facts of the case through a speaking order after affording an opportunity of hearing to him or his representative. It is expected that the said direction will be complied with within a period of two months from the date of the receipt of this order. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan*

APPROVED FOR REPORTING