

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.1167/2017
Muhammad Tahir Khan
Versus.

Ministry of Petroleum and Natural Resources and another

Date of Hearing: 26.09.2018
Petitioner by: Sardar Muhammad Ghazi, Advocate.
Respondents by: Mr. Rehan-ud-Din Golra, Advocate for respondent No.2
Ms. Sitwat Jehangir, learned Asst: A-G.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Muhammad Tahir Khan, has sought the following relief:-

“It is, therefore, respectfully prayed that the High Court may be pleased to allow the writ petition and declare the department’s claim of markup and act of withholding the financial benefits post-superannuation as illegal and without lawful authority. The department may be directed to release the financial benefits as per the petitioner’s entitlement without any further loss of time.”

2. The facts essential for the disposal of the instant petition are that the petitioner served in Hydrocarbon Development Institute of Pakistan (“H.D.I.P.”) for a period of 33 years. The petitioner was serving as Chief Accounts Officer (BS-20) when he was removed from service, vide office order dated 18.01.2016.

3. The petitioner was accused of embezzling Rs.10.414 million from H.D.I.P.’s bank accounts between 2007 and 2012. It was decided to proceed against the petitioner under the provisions of Government Servants (Efficiency and Discipline) Rules, 1973 (“E&D Rules”) as adopted by H.D.I.P., and on 23.11.2015, a charge sheet was issued to the petitioner. It is an admitted position that during the enquiry, the petitioner deposited an amount of Rs.10.414 million with H.D.I.P. After the petitioner’s reply to the charge sheet was found to be unsatisfactory, he was issued a notice dated 22.12.2015 to show cause as to why major penalty of "removal from service" should not be imposed on him due to inefficiency and misconduct. In the said show cause notice, the factum as to the return of Rs.10.414 million by the petitioner is

clearly mentioned. In the said show cause notice, it was also mentioned that the petitioner had promised to return the markup on the said amount. In the reply to the said show cause notice, the petitioner contested the H.D.I.P.'s claim for the return of the markup. Vide impugned order dated 18.01.2016, major penalty of *"removal from service"* with effect from 15.01.2016 was imposed on the petitioner in terms of the provisions of E&D Rules and H.D.I.P. Service and Financial Rules, 2009 ("the 2009 Rules"). Additionally, the petitioner was advised to deposit markup amounting to Rs.8.334 million in H.D.I.P.'s account. The said order dated 18.01.2016 has been impugned by the petitioner in the instant writ petition.

4. It may also be mentioned that F.I.R. No.7/2016 dated 27.01.2016 had also been lodged against the petitioner under sections 420, 468, 471, and 409 of the Pakistan Penal Code, 1860 read with section 5(ii) of the Prevention of Corruption Act, 1947 at F.I.A. Anti-Corruption Circle, Islamabad. Perusal of the order dated 14.02.2017, passed by the Special Judge Central, Islamabad, shows that the petitioner had pleaded guilty of the charge against him and had placed himself at the mercy of the Court. The said Court after considering the petitioner's confessional statement, took a lenient view of the matter and convicted the petitioner under section 409 PPC and section 5(ii) of the Prevention of Corruption Act, 1947, and sentenced him for the period already undergone by him in addition to the fine of Rs.25,000/-.

5. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that since the petitioner had deposited Rs.10.414 million with H.D.I.P., the imposition of major penalty of "removal from service" on the petitioner was very harsh; that since the petitioner had not invested the said amount, he could not have been called upon to return the markup allegedly accrued on the said amount; that the petitioner would be content if the penalty of "removal from service" imposed on the petitioner is converted by this Court into compulsory retirement; that if such a conversion takes place, the

petitioner would be able to obtain his pension and other retirement benefits; and that under the 2009 Rules, if an employee of H.D.I.P. is terminated due to misconduct or inefficiency, he would be entitled to the clearance of his dues within a period of thirty days from the issuance of the termination letter. 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 order dated 28.04.2016, passed by the Hon'ble Supreme Court of Pakistan in Civil Petition No.359/2016 titled “Zahoor Hussain Magsi Vs. Pakistan Postmaster General, etc.”

6. On the other hand, learned counsel for H.D.I.P. submitted that the impugned order dated 18.01.2016 does not suffer from any legal infirmity; that since the petitioner had confessed to embezzling public funds amounting to Rs.10.414 million, he does not deserve any leniency; that the petitioner had not just committed an offence but also a sin; that the petitioner by admitting misappropriation of public funds has disentitled himself from relief in the Constitutional jurisdiction of this Court; that since the petitioner had embezzled Rs.10.414 million between 2007 and 2012, and had returned the said amount in December 2015, he was bound to pay markup on the said amount; that the markup payable by the petitioner had been calculated to be Rs.8.334 million; and that in case, the petitioner did not pay the said amount, H.D.I.P. shall be left with no option, but to institute a suit for recovery of the said amount.

7. Learned counsel further submitted that the petitioner's departmental appeal against the said order dated 18.01.2016 had been turned down on 12.06.2017 by the Board of Governors of H.D.I.P.; that although the said order dated 12.06.2017 was on the record, the same had not been challenged by the petitioner; that the Court of the Special Judge Central, Islamabad had convicted and sentenced the petitioner for offences under section 409 PPC and section 5 (ii) of the Prevention of Corruption Act, 1947; that it is well settled that a convicted person cannot be reinstated in service; and that this Court, in writ jurisdiction, cannot substitute

the findings or the decision of the authority which imposed the penalty on the petitioner. Learned counsel for H.D.I.P. prayed for the writ petition to be dismissed. In making his submissions, learned counsel for H.D.I.P. placed reliance on the judgments in the cases of Farooq Nawaz Director of C.P. Directorate, AGS Branch, GHQ, Rawalpindi (2003 SCMR 678), Habib Bank Limited Vs. Ghulam Mustafa Khairati (2008 SCMR 1516), Muhammad Yousaf Khan Vs. Habib Bank Limited (2004 SCMR 149), and Rab Nawaz Hingoro Vs. Government of Sindh (2008 PLC (C.S.) 229).

8. I have heard the contentions of the learned counsel for the contesting parties, and have perused the record with their able assistance. The facts leading to the filing of the instant writ petition have been set in sufficient detail in paragraphs No.2 to 5 above, and need not be recapitulated.

9. There is no denial to the fact that the petitioner has returned Rs.10.414 million, which he was accused to have embezzled from H.D.I.P.'s bank account. This amount, which was said to have been embezzled by the petitioner during the period between 2007 and 2012 was returned by the petitioner in December, 2015.

10. The petitioner's grievance against the impugned order dated 18.01.2016 is twofold. The petitioner wants the major penalty of "removal from service" imposed on him to be converted into "compulsory retirement" so as to enable him to be given his pension and retirement benefits. He also wants H.D.I.P. to withdraw its demand for the payment of markup amounting to Rs.8.334 million.

11. Given the fact that the petitioner admitted to embezzling Rs.10.414 million from H.D.I.P.'s bank accounts and also returned the same after a few years, I do not find any illegality or disproportionality in the penalty of "removal from service" imposed on the petitioner. It is not the petitioner's case that the process culminating in the imposition of the said penalty had suffered from any illegality, impropriety or procedural irregularity. The mere fact that the petitioner had returned the embezzled amount to the H.D.I.P. would have no bearing on the competent

authority while imposing a penalty on the petitioner. In holding so, reliance is placed on the following case law:-

- (i) In the case of Sultan Hussain Vs. National Bank of Pakistan (2003 PLC (C.S.) 1247), the Hon'ble Supreme Court did not interfere with the imposition of the penalty of "dismissal from service" on an employee who had returned the amount embezzled by him. In the said report, it was observed *inter-alia* that *"the mere fact that the amount allegedly drawn in a fraudulent manner was returned and no loss was caused to the bank would not remove the charge of misconduct against the petitioner who being custodian of public and private money was not supposed to act in breach of trust"*.
- (ii) In the case of Ghulam Mustafa Channa Vs. Muslim Commercial Bank Ltd. (2008 SCMR 909), It was held *inter-alia* that *"the act of the petitioner in depositing the misappropriated or embezzled amount in the accounts from which he had misappropriated the same would not be considered as a mitigate circumstance to re-instate the petitioner in the service of the bank"*.
- (iii) In the case of Marajuddin Vs. National Institute of Cardio Vascular Disease (2013 SCMR 780), the Hon'ble Supreme Court did not interfere with the imposition of major penalty of "removal from service" imposed on the petitioner who had admitted the commission of misconduct and had tendered an unconditional apology.

12. The petitioner's reliance on the order dated 28.04.2016, passed by the Hon'ble Supreme Court in Civil Petition No.359/2016 titled "Zahoor Hussain Magsi Vs. Pakistan Postmaster General, etc." is misplaced for the simple reason that the proceedings in the said case arose from an order passed by the Federal Service Tribunal, Islamabad, and not from an order passed by a High Court in exercise of writ jurisdiction. In the said case, the Hon'ble Supreme Court converted the penalty of "dismissal from service" into "compulsory retirement" due to the fact that the embezzled amount of Rs.2,38,000/- had been returned by the petitioner in the said case. The amount embezzled by the petitioner in the instant

case is several times more in excess of the amount embezzled by the petitioner in Zahoor Hussain Magsi's case. It is well settled that this Court, in exercise of its jurisdiction under Article 199 of the Constitution, cannot substitute its findings for those of an inferior Tribunal. Reference in this regard may be made to the law laid down in the cases of Sardar Hussain Vs. Mst. Parveen Umer (PLD 2004 SC 357), General Manager, Pearl Continental Hotel Vs. Farhat Iqbal (PLD 2003 SC 952), Shah Jahan Vs. Syed Ajmal Ali (2000 SCMR 88) and Syed Azmat Ali Vs. The Chief Settlement and Rehabilitation Commissioner, Lahore (PLD 1964 SC 260).

13. Ever since the passing of the impugned order dated 18.01.2016, the petitioner has not paid the markup on the embezzled amount. I do not find any illegality in H.D.I.P.'s claim for the payment of markup on the embezzled amount. An employee cannot expect to escape the liability of payment of markup on the embezzled amount simply by returning the embezzled amount years after the embezzlement. As mentioned above, learned counsel for H.D.I.P. submitted that in the event, the petitioner does not pay markup on the embezzled amount, H.D.I.P. would be instituting a suit for recovery against the petitioner. In the event, the H.D.I.P. decides to file a suit for recovery against the petitioner, it would be for the Civil Court to determine the accuracy of the calculation made by the H.D.I.P. in determining the markup payable by the petitioner on the embezzled amount.

14. In this view of the above, I do not find any merit in this petition which is accordingly dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2018.

(JUDGE)

APPROVED FOR REPORTING.

*Qamar Khan**

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