

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

Writ Petition No.4846/2018
Haider Zaman Khattak
versus
Federation of Pakistan & 2 others

and

Writ Petition No.4847/2018
Hafeez Ullah Khan
versus
Federation of Pakistan & another

Petitioners by: Mr. Muhammad Asif Gujjar and Mr. Niaz Ahmed Rathore, Advocates.

Respondents by: Barrister Muhammad Mumtaz Ali, AAG.
Mr. Rashid Mahmood Ansari, Advocate for Respondent No.2 (Pakistan Science Foundation)
Mr. Imran Shams, Advocate for Respondent No.3

Date of Decision: 11.02.2020.

MOHSIN AKHTAR KAYANI, J: Through this single judgment, I intend to decide the captioned writ petitions for involving similar facts and question of law.

2. The petitioners through their respective writ petitions have called in question order dated 03.12.2018, passed by Ministry of Science & Technology, whereby reinstatement order of petitioners, dated 19.11.2018, has been withdrawn.

3. Brief and consolidated facts referred in the captioned writ petitions are that petitioners i.e. Haider Zaman Khattak and Hafeez Ullah Khan while serving as Secretary (BPS-20) and Chief Scientific Officer (BPS-20), respectively, in Pakistan Science Foundation (Respondent No.2) (*hereinafter referred to as "Foundation"*) have been subjected to disciplinary proceedings, against which the petitioners moved this Hon'ble Court by filing their respective writ petitions, which were dismissed vide order dated 16.12.2016 on the ground that show

cause notice cannot be assailed under constitutional jurisdiction of the High Court. Thereafter, the Foundation imposed a major penalty of compulsory retirement on the petitioners vide order dated 30.12.2016, against which the petitioners moved from pillar to post up till the apex Court. In the meanwhile, the petitioners on filing their representations to Ministry of Science & Technology have been reinstated into service vide order dated 19.11.2018, followed by their joining of duties on 22.11.2018. After performing of their duties for 15 days, the petitioners were served with impugned order dated 03.12.2018 withdrawing the earlier order of 19.11.2018 being not issued with the approval of competent authority. Hence, the captioned writ petitions.

4. Learned counsel for petitioners contended that once an order is passed by a competent authority in accordance with law and the same has been acted upon by the concerned employees/officers, there remains no power with the authority to withdraw the same at later stage for becoming functus-officio; that passing of the impugned order is against the principle of natural justice as the petitioners have not been given opportunity of defence or fair trial as guaranteed under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973; that impugned order is not warranted under Section 24-A of the General Clauses Act, 1897 as the same is not a well reasoned or justified order, therefore, the same may be declared as illegal and *void ab initio* with direction to the respondents to act in accordance with the order dated 19.11.2018.

5. Conversely, learned Additional Attorney General as well as learned counsel for respondents No.2 and 3 opposed the instant writ petitions and contended that petitioners in their respective representations claimed fair trial and accordingly, the Ministry of S&T approved to conduct de-novo inquiry in consultation with Law & Justice Division, however order of reinstatement of petitioners was issued on 19.11.2018 at the level of Deputy Secretary of Ministry

of S&T without seeking approval of the competent authority and when the issue came into notice of the competent authority, the order of reinstatement was withdrawn; that the petitioners were reinstated only for the purpose of de-novo inquiry, which was to be held in consultation with Law & Justice Division, however the reinstatement order was issued without the consultation of the said Division, hence, the matter was not decided in accordance with codal formalities; that since the order of reinstatement of petitioners into service was inadvertently issued, the same was withdrawn vide impugned order, therefore, the instant writ petitions may be dismissed as no illegality has been committed.

6. Arguments heard, record perused.

7. Perusal of record reveals that both the petitioners namely Haider Zaman Khattak, Secretary (BPS-20) and Hafiz Ullah Khan, Chief Scientific Officer (BPS-20) while serving in Pakistan Science Foundation/respondent No.2 had been proceeded against through disciplinary proceedings and were dismissed from service, however they assailed their dismissal order before the High Court, which was also dismissed and the matter is pending with the apex Court through C.P. No.3683/2018, and as such, the respondent Foundation imposed major penalty of compulsory retirement on the petitioners vide order dated 30.12.2016.

8. The petitioners had also filed their representations to the Ministry of Science and Technology being controlling ministry, whereupon the Secretary of the said Ministry passed reinstatement order on 19.11.2018, whereafter the petitioners joined their duties on 22.11.2018. However, the petitioners have been served with the impugned order dated 03.12.2018 after 15 days of their reinstatement, whereby the competent authority has withdrawn the earlier order of reinstatement passed on 19.11.2018, which is the subject matter of the captioned writ petitions.

9. Learned counsel for petitioners contended that once the Ministry of S&T vide order dated 19.11.2018 had withdrawn the major penalty of compulsory retirement from service, a right has been accrued in favour of the petitioners, who had joined their services and as such, principle of *locus poenitentiae* comes into play.

10. On the other hand, learned counsel for the respondent Foundation contended that the Ministry of S&T has no role for passing of earlier order of 19.11.2018, whereby imposition of major penalty of compulsory retirement on petitioners had been set aside and consequent thereto the petitioners had been reinstated into service, which is illegal. Similarly, the authority concerned when obtained the opinion from Law & Justice Division they realized their mistake, as a result whereof the office order dated 03.12.2018 has been passed declaring the earlier order of reinstatement *void ab-initio*.

11. In order to resolve the controversy, it is necessary to go through the status of Pakistan Science Foundation, which is a body corporate and established through Pakistan Science Foundation Act, 1973, whereas the terms and conditions of service of its employees are governed under Pakistan Science Foundation Regulations, 1974, which have been approved by the Board of Trustee of PSF only without consultation of the Establishment Division and Law Division.

12. The Pakistan Science Foundation Act, 1973 has its specific functions in terms of Section 4 i.e. establishment of comprehensive scientific and technological information and dissemination centers, to promote research in the universities, utilization of result of scientific and technological research, establishment of science centers, clubs, museum, etc., promotion of scientific societies, associations, exchange of scientists with other countries, grant of award/prizes and to conduct specific scientific surveys. In addition to said

functions, the respondent Foundation shall also maintain a National Register of highly qualified scientists of Pakistan including engineers and doctors, inside or outside the Pakistan and to review the progress of scientific research, however in performance of its functions the respondent Foundation shall be guided on the questions of policy by the instructions, if any, given to it by the Federal Government, which shall be the sole judge as to whether a question is a question of policy or otherwise.

13. In terms of Section 5 of the Pakistan Science Foundation Act, 1973, the Board of Trustee is vested with the general direction, conduct and management of affairs of the respondent Foundation, and as such, the Board of Trustee comprises of a Chairman, one eminent scientist and Director Finance who are appointed by the President being the whole-time members. Similarly, the other part time members including Chairman of National Science Council, four scientists to be nominated by National Science Council and 11 eminent scientists are to be appointed by the President. The remuneration and other terms and conditions of Chairman and whole-time members of the Board shall be determined by the President. The Chairman of the respondent Foundation in terms of Section 6 is entitled to hold the office for the term of three (03) years subject to the approval or choice of the President. The President may also terminate any of the Members of the Board with or without assigning any reason at any time. In terms of Section 10 of the Act, the Executive Committee shall be constituted consisting of Chairman and two whole-time members and the Board may delegate its powers and function to the Chairman or Executive Committee as it may consider necessary. The respondent Foundation shall run its affairs through grants provided by the Federal Government, Provincial Government, donations and endowments or income from other sources. Similarly, in terms of Section 16 of the Act, the respondent Foundation may appoint such

officers/servants and engage such consultant or experts as it may consider necessary for the efficient performance of its functions, on such terms and conditions as it may deem fit. The respondent Foundation may also make regulations for efficient conduct of affairs of its employee in terms of Section 18 of the Act.

14. The above referred glimpse of the PSF Act, 1973 gives an autonomous effect to the respondent Foundation, which has its independent Board of Trustee, whereby the role of the Federal Government in appointment of any other member or Chairman is not incorporated in the Act, whereas the Chairman as well as the Members were allowed to enjoy their terms at the wish of the President, even there was not an ex-officio member of the Board of Trustee nominated by the Federal Government, who is a Civil Servant or a Secretary of any ministry, as such the legislative intent is very clear and any interference by the Ministry of S&T is not permissible or applicable in the working of respondent Foundation.

15. I have also gone through the Rules of Business, 1973 and observed that the respondent Foundation has not been enlisted in the attached departments declared by the Federal Government in terms of Schedule 3, under Rule 4(4) of the Rules of Business, 1973. However, the respondent Foundation has been referred at Serial No.22, under heading of Scientific and Technological Research Division as referred at Serial No.28, which has been referred under Schedule 2 for Distribution of Business under Rule 3(3) of the Rules of Business, 1973.

16. Keeping in view the above position, the Secretary being the official head of the division shall be responsible for its efficient administration, discipline and conduct of business assigned to the division under Rule 3(3) and due execution of sanction policy. However, the respondent Foundation being a body corporate, although referred under the Scientific and Technological Research Division is

only for implementation of policy and no other reference, power or authority has been delegated to the Secretary, Ministry of S&T to deal with the issues of employees of the respondent Foundation in any manner.

17. While considering the above background of the law and legal status of the Ministry of S&T while dealing with the affairs of respondent Foundation, there is no cavil to the proposition that Secretary, Ministry of S&T has no legal position to deal with the affairs of respondent Foundation nor it is authorized to adjudicate upon any matter in terms of appeals provided in the PSF Employees Efficiency and Discipline Regulation, 1974 which only authorizes the Chairman to decide the terms and conditions of employees in appeal as per the approved regulations of Board of Trustee of PSF meeting held on 10.01.1974.

18. In view of settled position, this Court is confident to hold that nothing is left in favour of petitioners as the reinstatement order of 19.11.2018 of the petitioners in respondent Foundation is considered to be an illegal order and as such, no perpetual rights could be claimed on the basis of such illegal order as the Secretary, Ministry of S&T has no lawful authority under service regulation to entertain departmental appeal, therefore, Section 21 of General Clauses Act, 1897 comes into play, whereby the authority, which has issued illegal order, can withdraw the same as the same was not being sustainable in the eyes of law and the principle of *locus poenitentiae* is not applicable to illegal orders. Reliance is placed upon 2007 SCMR 318 (Muhammad Sidiq through LRs v. Punjab Service Tribunal, Lahore). In similar proposition, the apex Court in recent judgment reported as 2019 SCMR 643 (Government of the Punjab, Education Department through Secretary, Higher Education v. Muhammad Imran) have settled the question in terms of Section 21 of General Clauses Act, 1897 that the authority which can pass order is empowered to vary, amend, add to or to rescind the same, on the basis of which an aggrieved person takes decisive steps.

19. The Islamabad High Court in another case reported as 2016 PLC (CS) 491 (Irfan Muhammad vs. Federation of Pakistan) has settled the status of respondent Foundation, whereby the Board of Trustee is vested with power and jurisdiction to decide all matters under the PSF Act, 1973 pursuant to purpose and object of the statute and the Federal Government would not dictate its terms to the respondent Foundation, rather a policy matter could be conveyed as the legislative intent only protects the policy matter being binding upon the Board of Trustee, therefore, the respondent Foundation is the sole judge to settle the terms of its employees.

20. While considering the entire background, the order of reinstatement passed by Ministry of S&T is illegal, therefore, no right is established in favour of the petitioners to claim justification of their reinstatement, hence, the impugned order of withdrawal of reinstatement order is legal as the Ministry of S&T has no legal jurisdiction under the law as well as under the Rules of Business, 1973 to decide the fate of any employee of the respondent Foundation in any manner. Accordingly, the captioned writ petitions are meritless and the same are hereby DISMISSED.

(MOHSIN AKHTAR KAYANI)
JUDGE

Khalid Z.