

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Amin-ud-Din Khan

Mr. Justice Syed Hasan Azhar Rizvi

Civil Petition No.2007-L of 2023, CMA No.2782-L of 2023 in CP No.2007-L of 2023, C.P.No.2008-L of 2023 and CMA No.4417-L of 2023 in CP No.2008-L of 2023

[Against judgment dated 30.03.2023, passed by the Lahore High Court, Lahore in Writ Petitions No.33961 of 2022 and 178510 of 2018]

The Punjab Employees Social Security Institution, Lahore through its Commissioner etc. (in CP No.2007-L)

The Director General, Punjab Employees Social Security Institution, Lahore etc. (in CP No.2008-L)

...Petitioner/Applicant(s)

Versus

Javed Iqbal etc.

(in all cases)

...Respondent(s)

For the Petitioner/Applicant(s) : Mr. Aftab Raheem, ASC
(in both cases) Muhammad Shoaib Tabish,
Law Officer
(via video link from Lahore)

For Respondent No.1 : M. Irfan Khan Ghaznavi, ASC
(in both cases)

Date of Hearing : 18.01.2024

JUDGMENT

Syed Hasan Azhar Rizvi, J:- This judgment shall decide both these petitions as commonality of facts and law are involved.

The petitioners have challenged the common judgment of the learned Judge of the Lahore High Court, Lahore (**the High Court**) dated 30.03.2023, whereby Writ Petition No.33961 of 2022 was allowed and the orders dated 05.05.2021 and 21.03.2022 passed by Petitioners No.2 and 3 were set aside and Respondent No.1-Javed Iqbal (**the Respondent**) was reinstated in service from the date of his dismissal with all back benefits; whereas Writ Petition No.178510 of 2018 was disposed of by the same bench with the direction to Petitioner No.2 to take up the matter regarding regularization of services of the Respondent with relevant

authority and upon fulfilment of codal formalities shall ensure decision within a period of six months positively.

2. Facts of the case in brevity are that the Respondent joined Punjab Employees Social Security Institution, Lahore (**the PESSI**) as Bio-Medical Engineer on contract basis for a period of five years pursuant to letter of appointment dated 04.02.2009, which remained extended from time to time. The Respondent was ignored, whereas the other contract employees were regularized. The Respondent filed Writ Petition No.178510 of 2018 before the High Court, wherein on 14.03.2018 *interim* relief was granted to the extent that services of the Respondent would not be dispensed with till the next date of hearing. The *interim* relief was, however extended from time to time.

3. During the pendency of the said writ petition, proceedings under the Punjab Employees, Efficiency, Discipline and Accountability Act, 2006 (**PEEDA Act, 2006**) were initiated against the Respondent and *vide* order dated 02.03.2021 passed by Petitioner No.2, the Respondent was accordingly suspended. Aggrieved of his suspension order, during currency of *interim* relief granted by the High Court, as referred to above, the Respondent filed Criminal Original No.21561 of 2021 before the High Court and during pendency thereof, the Respondent was reinstated in service and was thereafter posted at the Social Security Hospital, Faisalabad *vide* order dated 01.04.2021. Consequently, the Respondent filed another Criminal Original No.23804 of 2021 before the High Court. On conclusion of the disciplinary proceedings despite pendency of the Writ Petition No.178510 of 2018 as well as the contempt petitions before the High Court, as referred to above, major penalty of dismissal from service was imposed against the Respondent *vide* order dated 05.05.2021.

Against the imposition of major penalty of dismissal from service, the Respondent preferred a departmental appeal before Petitioner No.3 which was rejected *vide* order dated 21.03.2022.

4. The Writ Petition No.33961 of 2022 filed before the High Court was allowed, whereas in the connected Writ Petition No.178510 of 2018, Petitioner No.2 was directed to take up the matter regarding regularization of service of the Respondent with the relevant authority as stated above. Hence, these petitions.

5. The learned counsel for the petitioners argued that the impugned judgments passed by the High Court are not sustainable in the eyes of law and were passed before accrual of cause of action. He contends that the High Court has not taken into consideration the facts of the case in its true perspective.

6. Conversely the learned counsel for the Respondent has strongly supported the impugned judgments.

7. We have heard the learned counsel for the parties and have also gone through the record of the case with their able assistance.

8. With regard to the allegation levelled against the Respondent regarding his poor performance from 06.11.2011 to 21.08.2020, we observe that the fate of the said allegation could only be decided after conducting a thorough probe/regular enquiry. Even, the said allegation stands belied from the remarks recorded by the Reporting Officer in the Personal Evaluation Reports of the Respondent from the years 2009 to 2020, wherein his performance has been shown as satisfactory. The conduct of the petitioners establishes *mala fide* on their part to dispense with the services of the Respondent as all penal actions against the Respondent were initiated by the departmental authorities after filing of writ petitions and contempt petitions/applications.

9. As regards the allegation of not following the duty timing properly by the Respondent, it is apparent from the record that without

specifying days when the Respondent did not attend the office in time lead/support to the plea of the Respondent that he performed his duties to the entire satisfaction of his superiors. Moreover, the Reporting Officer while recording the remarks in the column of "Punctuality" did not give any adverse remarks against the Respondent.

Regarding the show cause notice issued to the Respondent relating to not providing all the pre-requisites (documents) as required by the Punjab Public Service Commission for regularization of the subject post, the allegation was belied that during the hearing of the writ petitions before the High Court, it was stance of the Respondent that he submitted the required documents and again he submitted the same on 15.06.2022 through written application addressed to Petitioner No.2 pursuant to an order dated 17.05.2022. The last allegation in the show cause notice that despite of previous enquiries initiated against the Respondent his behaviour remained very irresponsible during his service, we find that no incident or untoward situation during the service of the Respondent has been pointed out or referred to by the petitioners.

10. While going through the impugned judgments, we do not find any irregularity or perversity therein. We further observe that the High Court has elaborately discussed all material aspects of the matter either legal or factual in the impugned judgments. We have arrived at the same conclusion as of the High Court and find no reason or basis as a ground of justification to take a different view.

11. Consequently, we do not find any merit in these petitions which are accordingly dismissed and leave refused. All the CMAs are accordingly disposed of.