

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Umar Ata Bandial
Mr. Justice Qazi Muhammad Amin Ahmed

Civil Petition No.1567-L/2019

(Against the judgment dated 26.02.2019
of the Punjab Service Tribunal, Lahore
passed in Service Appeal No.3866/2016)

The District Police Officer, Mianwali & 2 others

...Petitioner(s)

Versus

Amir Abdul Majid

....Respondent(s)

For the Petitioner(s): Mr. Zaman Khan Vardag,
Additional Advocate General, Punjab

For the Respondent(s): Mr. Kashif Ali Chaudhry, ASC
along with respondent.

Date of hearing: 19.11.2020.

ORDER

Qazi Muhammad Amin Ahmed, J.- In the wake of his nomination as one of the accused in a case of homicide, Amir Abdul Majid, respondent, a police constable, was dismissed from service; his attempts for reinstatement on the departmental side failed, however, the Punjab Service Tribunal, Lahore, vide judgment dated 26.02.2019 set aside the dismissal and re-inducted him in the service. Respondent's acquittal by the trial Court vide judgment dated 30.05.2014 primarily appears to have weighed with the Tribunal, being assailed on the ground that his success in the criminal contest by itself would not furnish him with a ground for reinstatement in a position, meant to enforce and uphold the law. The learned Additional Advocate General Punjab has referred to the law declared by this Court to argue that respondent's acquittal in the criminal trial, received by the Service Tribunal as a

justification, for his reinstatement in the disciplined force warranted interference; he has particularly taken exception to the following paragraph in the impugned judgment:

"It is well settled preposition of law that once civil servant is acquitted in criminal case, then on this very charge he cannot be awarded any punishment by the department, because acquittal is for all future purposes."

2. Heard. Record perused.

3. It is by now well settled that a civil servant facing expulsive proceedings on departmental side on account of his indictment on criminal charge may not save his job in the event of acquittal as the department still may have reasons/material, to conscientiously consider his stay in the service as inexpedient; there are additional reasons to disregard his acquittal inasmuch as criminal dispensation of justice involving corporeal consequences, comparatively, requires an higher standard of proof so as to drive home the charge beyond doubt, an exercise to be routed through a procedure stringently adversarial, therefore, factuality of the charge notwithstanding, procedural loopholes or absence of evidence, sufficient enough to sustain the charge, at times occasion in failures essentially to maintain safe administration of criminal justice out of abundant caution. Departmental jurisdiction, on the other hand, can assess the suitability of a civil servant, confronted with a charge through a fact finding method, somewhat inquisitorial in nature without heavier procedural riders, otherwise required in criminal jurisdiction to eliminate any potential risk of error, therefore, the Tribunal has undoubtedly misdirected itself in reinstating the respondent, considering his acquittal as the sole criterion in isolation to the totality of circumstances whereunder he had succeeded to vindicate his position. Reference may be made to the cases of Dr. Sohail Hassan Khan and others Versus Director General (Research), Livestock and Dairy Development Department, Punjab, Lahore and others (2020 SCMR 1708), Liaqat Ali versus Government of N.W.F.P. Through Secretary Health, Peshawar and others (2011 PLC (CS) 990), Chairman Agricultural Development Bank of Pakistan and another Versus Mumtaz Khan (PLD 2010 SC 695), Government of Pakistan through Secretary m/o Finance and others Versus Asif Ali and others (2007 PLC (CS) 271), Superintendent of Police, D.I. Khan and others Versus Ihsanullah (2007 SCMR 562), Sami Ullah Versus Inspector-General of Police and others (2006 SCMR 554), Ractor

Comsats vs. Ghulam Umar Kazi (2006 SCMR 1894), Executive Engineer and others Versus Zahid Sharif (2005 SCMR 824), Khaliq Dad Versus Inspector-General of Police and 2 others (2004 SCMR 192), Arif Ghafoor Versus Managing Director, H.M.C., Texila and others (PLD 2002 SC 13) Mir Nawaz Khan Versus Federal Government through Secretary, Ministry of Finance, Islamabad and 2 others (1996 SCMR 315), Talib Hussain Versus Anar Gul Khan and 4 others (1993 SCMR 2177, Mud Izharul Ahsan Qureshi Versus M/S P.I.A.C. (1994 SCMR 1608), Muhammad Nazir Versus The Superintendent of Police, Toba Tek Singh and others (1990 SCMR 1556) Muhammad Tufail Versus Assistant Commissioner/Collector (1989 SCMR 316), Muhammad Saleem vs. Superintendent of Police, Sialkot and another (PLD 1992 SC 369), Muhammad Ayub Versus The Chairman, Electricity Board, WAPDA, Peshawar and another (PLD 1987 SC 195), The Deputy Inspector-General of Police, Lahore and others Versus Anis-ur-Rehman Khan (PLD 1985 SC 134) and Begum Shams-un-Nisa Versus Said Akbar Abbasi and another (PLD 1982 SC 413). However, while reaffirming the declaration of law referred to above, nonetheless, after hearing the learned Additional Advocate General and examining the record, having regard to the peculiarity of circumstances, we do not feel persuaded to non-suit the respondent, present in person, merely on account of flawed handling of his plea by the Tribunal.

4. It is a common ground that one Ziaullah was done to death on 11.12.2011 within the precincts of Police Station City Mianwali; the occurrence took place in a lane in front of a house where the respondent lived alongside family members that included his brothers as well. According to the prosecution, the deceased was intercepted by the accused named in the crime report while he went past the lane in front of the house; respondent's name is conspicuously missing in the array of the accused nominated in the crime report and it is alleged that he was subsequently nominated through a supplementary statement purportedly recorded the same day, a position that is belied by the site plans including the one with scale drafted as late as on 16.12.2011, irresistibly suggesting that he was taken on board much late in the day. Even otherwise the prosecution witnesses have contradicted each other on respondent's dubious nomination. The learned trial Judge took stock of inherent discrepancies qua the respondent and held the charge against him as preposterous. In the above backdrop, respondent's acquittal from the charge, not only vindicated his claim of being subsequently hounded on a trump up charge but also left nothing in the

field to conscionably view in its aftermaths his presence as detrimental or non-conducive to good order in the department wherein he otherwise boosted an unblemished career. The Court may decline in its discretion to interfere with an order, otherwise untenably contoured, nonetheless, found to be within the remit of equity and fairness tending to advance good, therefore, notwithstanding the error of approach by the Service Tribunal, we do not feel inclined to interfere with the impugned judgment in order to avoid futility of an avoidable detour. Civil petition fails. Leave declined.

Judge

Judge

Lahore, the
19th November, 2020
Not approved for reporting
Azmat/-