

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Gulzar Ahmed, HCJ
Mr. Justice Ijaz ul Ahsan

Civil Appeal No.370 of 2020

(Against the judgment dated
3.3.2017, passed by the
Punjab Service Tribunal,
Lahore, in Appeal No.377 of
2014)

Commissioner Faisalabad Division, Faisalabad
and another

... Appellant (s)

Versus

Allah Bakhsh son of Mian Muhammad, Patwari
Halqa, Chak No.490/JB, Tehsil Shorkot, District
Jhang

... Respondent (s)

For the Appellant (s) : Ch. Faisal Fareed,
Addl. Advocate General, Punjab
Mr. Babar Hayat Tarar,
Sr. Member, Board of Revenue
Mr. Ishrat Ali,
Commissioner, Faisalabad
Mr. Faizan Ahmad,
A.C., Shorkot

For Respondent (s) : Mr. Shahid Azeem, ASC
Mr. Ahmad Nawaz Ch., AOR with
Respondent

Date of Hearing : 01.07.2020

JUDGMENT

GULZAR AHMED, CJ.- The Senior Member, Board of Revenue, Punjab (**SMBR**) has appeared before the Court and filed a Report showing that as many as four persons were involved in making the present matter time-barred (at petition stage). Out of those four persons, one has expired and against remaining three, disciplinary proceedings have already been initiated. The matter is at the stage of passing of the final order by the Competent Authority. Such Report of

SMBR is kept on the record. As explained in the said Report and for the reasons assigned in the application for condonation of delay, the delay is condoned and in such terms, the application is disposed of.

2. On the merits of the case, the learned Additional Advocate General, Punjab has contended that the respondent had admitted the fact of signing the mutation of Government land in favour of one Iqbal. Despite such admission of the respondent, the Punjab Service Tribunal (**the Tribunal**) found such commission on the part of respondent to be not misconduct, and the penalty of dismissal from service, imposed upon him, was found to be not commensurate with the gravity of the offence. The penalty thus imposed on the respondent by departmental authorities was converted into forfeiture of two years' approved service.

3. We note that such manner of dealing of the appeal filed by the respondent before the Tribunal is totally not in accordance with the law. Where the respondent himself has admitted the commission of the offence that he has transferred Government land measuring 270 *Kanals*, situated in Chak No.492/JB, District Jhang, causing loss of millions of rupees to the Government exchequer, such conduct of the respondent could not be considered as mere negligence, rather it constitutes misconduct and maximum penalty under the law has to be imposed upon him.

4. We also note that the Tribunal has for a considerable time been taking a lenient view of misconduct by government servants even where an employee of the Department has admitted the commission of an offence constituting serious misconduct or the offence has been proved through inquiry. Despite this, the Tribunal reduced the penalty imposed upon such an employee by the Authority/Department,

considering the same to be harsh and not commensurate with the gravity of the offence, without assigning any legally sustainable reasoning by stating that the Tribunal enjoys “vast powers” under Section 5 of the Service Tribunals Act, 1973 to confirm, set aside, vary or modify orders passed by the departmental authorities. The question is how “vast” are the powers of the Tribunal and whether these powers are discretionary, at the whims of the Tribunal and totally unstructured and unlimited.

5. It is important to note that the Government properties and the Government funds are not to be doled out by the Government officials, either to private persons or to themselves, and such conduct amounts to fraud upon the Government and person(s) committing fraud or embezzlement of the Government property or money could, in no circumstances be treated leniently in disciplinary proceedings and in appropriate cases, be allowed to continue in the service.

6. The respondent was proceeded against departmentally by issuing of a Show Cause Notice and the Statement of Allegations against him. An inquiry was conducted and the requirements of natural justice were duly complied with. We note that the judgment of the Tribunal holding that the respondent had been given harsh punishment and the punishment was not commensurate with the gravity of the offence, is altogether misplaced; more particularly, when looked at from the point of view that the respondent has transferred/mutated Government land in favour of private parties, causing huge loss to the Government exchequer.

7. The submission of the learned counsel for the respondent that no loss has been caused to the Government because the land in question was later taken back by the Government is of non-

consequence in the facts and circumstances of the present case, even if true. When the conduct of the respondent came to light, the Government machinery took steps to rectify such transfer of the Government land to the private persons. The mere fact that despite commission of the offence no loss was caused to the Government exchequer or the loss caused was recovered cannot be a mitigating factor in punishing a government servant whose misconduct stands established. If he gets off scot free or with a minor penalty what is there to prevent him from repeating the same offence and the next time loss may actually be caused and not recovered. This is the inherent flaw in the argument of the learned counsel for the respondent.

8. The contention of the learned counsel for the respondent is that even if he has committed some misconduct, the appellants were not justified in passing the order of dismissal against him, is misconceived and without substance. Once misconduct is established, it is the prerogative of the department to decide on the quantum of punishment, out of the various penalties provided in law. Unless the Tribunal finds exercise of such prerogative by the departmental authority to be perverse and totally disproportionate to the gravity of the offence/misconduct for which reasons have to be recorded penalty imposed by the departmental authorities cannot be interfered with. Such reasons must valid and meet the standards of logical and judicial reasoning. The powers of the Tribunal under Section 5 of the Punjab Service Tribunals Act, 1974 to confirm, set aside, vary or modify orders appealed against are neither discretionary nor unbridled. Such powers have to be exercised cautiously, carefully and with circumspection where the order imposing the penalty is wholly perverse or *ex facie* so demonstrably disproportionate and excessive

for the offence/misconduct, that to let it stand would be unfair, unjust and inequitable. Further, where powers are exercised under Section 5 *ibid*, detailed reasons must be recorded justifying such exercise which would withstand the test of judicial scrutiny by this Court. The Tribunal has in this case reduced the penalty without much ado and no reasoning although the respondent was found guilty of misconduct by all fora in all departmental proceedings.

9. In this view of the matter, we have found the order of the Tribunal to be self contradictory in excess of jurisdiction and devoid of any reasoning let alone cogent and legally acceptable. The impugned judgment of the Tribunal can therefore not be sustained. The appeal is accordingly allowed and the impugned judgment is set aside. Consequently, the order passed against the respondent for his dismissal from service is restored. Copy of this order be supplied to the Chairman as well as the Members of the Federal Service Tribunal and all the Provincial Service Tribunals.

Chief Justice

Islamabad, the,
1st July, 2020
Mahtab H. Sheikh/*

Judge

'APPROVED FOR REPORTING'