

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ
 MR. JUSTICE IJAZ UL AHSAN

CIVIL PETITION NO.2902 OF 2018.

(Against the judgment dated 09.06.2018 passed by the Khyber Pakhtunkhwa Subordinate Judicial Service Tribunal in Service Appeal No.52 of 2011).

Fayyaz Ullah Khan.

...Petitioner(s)

Versus

Peshawar High Court, Peshawar through Registrar.

...Respondent(s)

For the Petitioner(s): Malik Ghulam Mohy ud Din, ASC.

For the Respondent(s): N.R.

Date of Hearing: 15.04.2020.

ORDER

GULZAR AHMED, CJ.- We have heard the learned ASC for the Petitioner at length and have gone through the material available on record.

2. It appears from the record that a show cause notice dated 02.10.2010 was issued to the petitioner who was working as a District & Sessions Judge in Subordinate Judiciary of the Province of Khyber Pakhtunkhwa. The show cause notice contained the following allegations:

"That you were superseded three times from promotion to the post of Additional District & Sessions Judge on 05.11.1992, on 01.11.2004 and on 05.09.2006.

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That you have persistent reputation of being corrupt throughout.

That your record speaks volume about your ill reputation which included adverse entries in your PERs regarding your integrity during your service career though some of such entries were expunged on technical grounds yet they do little to wipe out your overall impression of being corrupt.

That your lifestyle shows that you are living beyond your ostensible legal means."

The Petitioner submitted his reply to the above show cause notice in which while denying the matter relating to his ACRs he took a specific plea with regard to the charge that his lifestyle showed that he was living beyond his ostensible legal means in the following terms:

"That regarding his lifestyle (living beyond means) it is respectfully stated that he is a Grade 21 Officer and receiving handsome salary, his wife is Specialist/Gynaecologist who has served as Specialist at Saudi Arabia and Abu Dhabi for a long time and now she has a flourishing practice at Peshawar, besides he has sufficient means of livelihood from his ancestral property which can be proved during regular inquiry."

In view of such reply by the petitioner to the show cause notice, the Respondent did not find it necessary to hold a regular inquiry rather gave him a second show cause notice and also asked him whether he desired to be heard in person. The Petitioner submitted his reply to the second show cause notice and requested a personal hearing. He was given personal hearing and thereafter the Authorized Officer through his recommendations dated 29.10.2010 recommended imposition of major penalty of compulsory retirement upon the Petitioner. Accordingly, the competent

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authority vide office order dated 29.10.2010 awarded major penalty of compulsory retirement to the Petitioner. He filed departmental appeal and having received no response preferred a service appeal before the Khyber Pakhtunkhwa Subordinate Judicial Service Tribunal, Peshawar ("the Tribunal"). The said appeal of the petitioner was dismissed by the Tribunal vide impugned judgment dated 09.06.2018.

3. The only submission made by learned ASC for the petitioner is that the petitioner was not granted an opportunity of defence as no regular inquiry in the matter was held and the petitioner ought to have been given a chance to substantiate his plea which he had taken in his reply to the first show cause notice. We have noted that this very aspect of the matter has been dealt with by the Tribunal more particularly with regard to the allegation against him qua petitioner's living beyond legal means in para 13 of the impugned judgment, it has been observed as follows:

"13. Ibid reply of the appellant shows that he had accepted the allegation of leading a stylish life which was beyond his lawful means. On admission, he was required to discharge the above burden which he took upon his shoulders but he did not produce any iota of evidence to that effect. Had he not taken the plea, which he took, then of course burden would have been on the Establishment to substantiate its charge but once the appellant admitted that he was a Grade-21 Officer with a handsome salary, that his wife was a Specialist/Gynaecologist having served at Saudi Arabia and Dubai for a long time and that he had sufficient means of livelihood from his ancestral property, then, upon taking such plea, he was bound to produce some material in support of his ibid plea, which he did not do".

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4. We have asked the learned counsel for petitioner to cite before us any precedents dealing with the question raised by him. He has relied upon judgments of this Court reported as Khuda-i-Nazar v. Curator (2000 SCMR 1743), Naseeb Khan v. Divisional Superintendent (2008 SCMR 1369) and Executive Engineer, GEPCO Limited v. Liaqat Ali (2010 SCMR 237). We have gone through the said judgments and found that once an allegation is made against an employee which he denies, it is incumbent upon the employer to prove such allegation against the employee which may necessitate a regular inquiry during which evidence can be recorded and right of cross examination can be afforded. However, in the case in hand, in para 5 of his reply to the show cause notice, the petitioner has admitted the fact that he was living beyond his means and gave justifications for the same. However, he did not substantiate his defence by placing anything on record except a statement of account of his wife from National Bank of Abu Dhabi, Mirfaa Branch for the period from 21.01.2006 to 04.04.2006 and a mini statement of account of the same Bank/Branch dated 21.04.2006.

5. We note that the above statement of account is only for a period of less than four months in the year 2006 and there was certain credit/balance in the account of his wife on 04.04.2006 amounting to 183,931.88 UAE Dirham. Further, in the mini statement of account, the current balance as shown was in the sum of 184,431.88 UAE Dirham. Apparently, these statements of account were placed

on record to show that wife of the petitioner had considerable earnings in UAE. No evidence of any nature whatsoever was placed on record to show her earnings as a Gynaecologist or the earnings of the petitioner from his alleged ancestral property.

6. Be that as it may, the above statement of account itself cannot demonstrate that the petitioner could have lived a lifestyle which was beyond his known means of earning. Except the aforementioned statement of account nothing else has been placed on record by the petitioner neither while submitting his reply to the first show cause notice nor with his reply to the final show cause notice. Neither during the course of hearing of this petition nor before the Tribunal, he filed any material to substantiate his plea that he possessed the means to live a lifestyle beyond his known means as alleged in the show cause notices. The Tribunal in para 13 of its impugned judgment after having elaborately discussed the said aspects of the matter had come to the conclusions which do not suffer from any illegality.

7. We have time and again asked the learned counsel for the petitioner to show us the law that after having taken up a plea in para 5 of his reply to the show cause notice did the burden of proof not shift upon the petitioner to prove and substantiate his such plea. However, the learned counsel for the petitioner was unable to give any satisfactory reply to the same. He has also not cited any law in this regard. The

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precedent cases cited by him are not relevant and do not help the case of the petitioner.

8. For the foregoing reasons, we do not find any merit in this petition which is accordingly dismissed and leave refused.

Sd/- H C J
Sd/- J

ISLAMABAD.

15.04.2020.

ZR/*

'Not Approved For Reporting'