

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE GULZAR AHMED, C.J.

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

**CIVIL PETITION NO. 3525 OF 2018**

*(On appeal against the judgment dated 18.07.2018  
passed by the Punjab Service Tribunal, Lahore in  
Appeal No. 285/2017)*

Fayyaz Hussain

...Petitioner(s)

**VERSUS**

Executive District Officer (Education), City District Government,  
Rawalpindi and others

...Respondent(s)

For the Petitioner(s): Mr. Muhammad Munir Paracha, ASC  
Mr. Mehmood Ahmad Sheikh, AOR

For the Respondent(s): Not represented

Date of Hearing: 10.03.2021

**JUDGMENT**

**SAYYED MAZAHAR ALI AKBAR NAQVI, J.-** Through this petition under Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has called in question the judgment dated 18.07.2018 passed by the Punjab Service Tribunal, Lahore, whereby the Service Appeal filed by him was dismissed and the major penalty of "removal from service" was maintained.

2. Briefly stated the facts of the matter are that petitioner while serving as EST Teacher in Government Boys Elementary School, Darnoian, Tehsil Kotli Sattian was proceeded against under Punjab Employees Efficiency, Discipline and Accountability Act, 2006, for the charges of (i) misconduct, (ii) willful absence from duty since 01.09.2008, and (iii) non-production of service record. The District Education Officer (M-EE), Rawalpindi i.e. competent authority after dispensing with the regular inquiry issued show cause notice to the petitioner. He was also served three notices for personal hearing but he did not appear before the competent authority rather his brother appeared on his behalf. Ultimately, the

competent authority dismissed him from service vide order dated 04.06.2010. The petitioner then filed departmental appeal before the Executive District Officer (Education), Rawalpindi being appellate authority, who vide order dated 11.06.2012 reinstated the petitioner into service and directed the District Education Officer (M-EE) to proceed against him on the charge of absence from service after fulfilling all codal formalities including personal hearing. After remand, an inquiry was conducted wherein the charge of absence against the petitioner was found proved, hence, the competent authority vide order dated 14.10.2016 awarded him major penalty of removal from service with effect from 01.09.2008 i.e. the date from which he absented himself from duty. The departmental appeal filed by the petitioner stood rejected by the appellate authority vide order dated 16.12.2016. Being aggrieved, he filed Service Appeal before the Punjab Service Tribunal but it also met the same fate vide impugned judgment dated 18.07.2018. Hence, this petition seeking leave to appeal.

3. Learned counsel for the petitioner inter alia contended that while imposing major penalty of removal from service, the competent authority did not comply with the provisions of Punjab Employees Efficiency, Discipline and Accountability Act, 2006; that the inquiry officer had observed that as the petitioner has been reinstated by the appellate authority, the inquiry on the same charges is not justified, therefore, the learned Punjab Service Tribunal without taking into consideration this aspect of the matter has wrongly dismissed the appeal.

4. We have heard learned counsel for the petitioner at some length and have perused the record.

5. It is admitted position that the petitioner remained absent from duty for a period of eight long years without obtaining any leave from the department. The record shows that he went abroad. It is on record that in the earlier departmental proceedings, he was issued three notices for personal hearing but instead of personally appearing before the competent authority he sent his brother. His absence was confirmed by the Head Master of the School where the petitioner was serving. The competent authority i.e. District Education Officer (M-EE), Rawalpindi had also visited the

*school and found the petitioner absent from duty. Despite that to meet the ends of justice, de novo proceedings were directed to be carried out against the petitioner on the charge of absence. An inquiry officer was deputed to probe into the matter, who found the petitioner guilty of the charge. The petitioner was also heard by the competent authority in person and after that major penalty of removal from service was imposed upon him. Learned counsel for the petitioner did not dispute the fact of absence but he tried to make out a case by contending that while imposing major penalty of removal from service, requisite codal formalities were not fulfilled. In view of the above when an inquiry was conducted, petitioner was personally heard and was provided full opportunity to present his case, it cannot be said that the department had not fulfilled the requirements provided under Punjab Employees Efficiency, Discipline and Accountability Act, 2006. Even otherwise, it is now well settled that where the absence from duty is admitted, there is no need to hold regular inquiry. This Court in a recent judgment reported as National Bank of Pakistan Vs. Zahoor Ahmed (2021 SCMR 144) while relying on an earlier judgment of this Court has held as under:-*

*"In the face of such absence from duty of the respondent, which being admitted, there was no need to hold a regular enquiry because this Court in the case of Federation of Pakistan through Secretary Ministry of Law and Justice Division, Islamabad v. Mamoon Ahmed Malik (2020 SCMR 1154), has already held that where the fact of absence from duty being admitted on the record, there was no need for holding of a regular enquiry for that there was no disputed fact involved to be enquired into."*  
**(Underlined to lay emphasis)**

6. So far as the argument of the learned counsel for the petitioner that when the inquiry officer had observed that the inquiry on the same charges is not justified, the competent authority ought to have refrained from passing the impugned order is concerned, suffice it is to state that the findings of the inquiry officer are not binding on the competent authority and secondly, when the inquiry officer had found that "all the allegations lodged against accused are proved beyond any doubt", no benefit could be given to the petitioner. Article 212(3) of the Constitution of Islamic Republic of Pakistan specifically mandates that "an appeal to the Supreme

*Court from a judgment, decree, order or sentence of an Administrative Court or Tribunal shall lie only if the Supreme Court, being satisfied that the case involves a substantial question of law of public importance, grants leave to appeal." No such question of law of public importance within the meaning of aforesaid Article 212(3) of the Constitution has been raised by the learned counsel for the petitioners, calling for interference by this Court.*

7. *For what has been discussed above, this petition having no merit is accordingly dismissed and leave to appeal is refused.*

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the  
10<sup>th</sup> of March, 2021  
Not Approved For Reporting  
**Khurram**