

PRESENT:
MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE MUNIB AKHTAR

(Against the order dated 16.12.2019 passed by the Federal Service Tribunal, Islamabad in Appeal No.52(R)/CS of 2018).

...Petitioner(s)

...Respondent(s)

Date of Hearing: 18.12.2020.

IJAZ UL AHSAN, J.- Leave to appeal is sought against a judgment of the Federal Service Tribunal, Islamabad dated 16.12.2019. Through the impugned judgment a Service Appeal filed by the petitioner was partly allowed to the extent that the penalty of dismissal from service was converted into withholding of increment for a period of five years. The Appellant was reinstated into service from the date of his dismissal.

2. Briefly stated the facts of the case are that the Respondent was employed as a Chowkidar and was performing his duties in the Federal Directorate of Education.

Headquarter at Islamabad. While on a visit to his parent Institution on 12.05.2015 i.e. Islamabad Model School No.2, Sector G-8/2, Islamabad he had an altercation with Mst. Parveen Akhtar, Aya of the said school. He allegedly physically assaulted her, used abusive language and threatened her in various ways. The occurrence was seen by various members of the school staff including the Principal. She lodged a complaint against the Respondent before the Federal Ombudsman under Protection against Harassment of Women at Workplace. She also lodged an FIR against the Respondent with the concerned Police Station. The Federal Ombudsman referred the matter to the department with a direction to conduct an inquiry. Show cause notices dated 10.11.2015 and 12.01.2016 under E&D Rules were issued to the Respondent. After processing the matter and conducting an internal inquiry, major penalty of dismissal from service was imposed on the Respondent vide order dated 10.05.2016. His departmental appeal was rejected on 23.11.2017. Aggrieved, he approached the Federal Service Tribunal, Islamabad. Such appeal was allowed.

3. Moulvi Ejaz-ul-Haq, learned Deputy Attorney General appearing on behalf of the petitioner submits that there were serious allegations of physical violence resulting in multiple injuries to the victim which were duly reflected in the medico-legal report ("MLR"). The said position was also confirmed by eye-witnesses who were examined by the Committee. Such acts of violence and especially against

women within the premises of a school constituted serious misconduct and was appropriately punished by the competent authority. He further submits that imposition of major penalty of dismissal from service was justified in the facts and circumstances of the case. The Tribunal therefore had no lawful reason or justification to modify the penalty and reduce it to stoppage of increments for five years. He submits that it is settled law that mere fact that the Respondent was acquitted in criminal proceedings does not constitute basis for interfering in departmental proceedings because the same are separate and distinct matters under different laws and requiring different standards of proof.

4. The Respondent is present in person and submits that the occurrence in question did not take place. He maintains that the victim had a grudge against him and had started the fight herself and he only held her arms to prevent her from inflicting any physical injury on him. He further submits that the action taken by the department was harsh and disproportionate to the gravity of the offence allegedly committed by him.

5. We have heard the learned Deputy Attorney General as well as the Respondent present in person and also gone through the record.

6. We find that there is sufficient and adequate material on record to establish the charge of using physical violence against Mst. Parveen Akhter, Aya of the school. The

said fact was substantiated not only by the eye-witness account but also corroborated by the Medico Legal Report which confirmed commission of physical violence and infliction of injuries on the person of the victim. The internal inquiry found him guilty of all charges. No bias partiality or mala fides is alleged against the inquiry Committee. The Respondent was given fair opportunity to defend himself which he failed to do. The fact that the Respondent was acquitted by the Court of Judicial Magistrate, Islamabad is inconsequential in view of the fact that the departmental proceedings which were independently undertaken are separate and distinct proceedings and have a different standard of proof. In accordance with service laws and departmental procedure, the said standard was adequately met. Further, the Tribunal has itself recorded findings to the effect that "no doubt the appellant has committed misconduct but the penalty imposed upon the appellant by the respondents is too harsh and does not commensurate with the charge".

7. We are afraid, we do not subscribe to the said finding of the Tribunal for the reason that the Respondent had physically assaulted and tortured a female worker of the school. Such violence was perpetrated within the school premises which violated the sanctity of an educational Institution. In our opinion this constitutes an act of gross misconduct. We also notice that the internal inquiry Committee consisted of three independent Senior Officers

namely Ms. Farida Yasmeen, Director School (Female), Major Abdul Waheed Khan, Deputy Director (C&M Cell), Member and Mr. Muhammad Azhar Khan, Supervisor (Monitoring) Member. The said Committee acted fairly, in accordance with law and gave the Respondent ample opportunity to defend himself. The charges of harassment, violation of service norms by physical violence and torture perpetrated on Mst. Parveen Akhter, Aya of the school, use of blackmailing tactics and spoiling the congenial environment and sanctity of the Educational Institution stood fully established. In the face of proof of such charges, we fail to understand how the penalty imposed by the department was "too harsh or not commensurate" with the offence alleged against the Respondent. Further, the judgment of the Tribunal is devoid of any reason let alone cogent for converting the major penalty of dismissal from service into withholding of increments for a period of five years.

8. This Court has repeatedly held that where the Tribunal exercises jurisdiction under Section 5 of the Service Tribunals Act, 1974, legally sustainable reasons must be recorded. Merely and casually making an observation that the penalty imposed is not commensurate with the gravity of the offence is not enough and constitutes arbitrary capricious and unstructured exercise of jurisdiction. The order must show that the Tribunal has applied its mind to the facts and circumstances of the case and exercised its discretion in a structured, lawful and regulated manner keeping in view the

dicta of superior Courts in the matter. All of the above factors are conspicuous by their absence in the judgment of the Tribunal impugned before us. We, therefore, find the impugned judgment of the Tribunal to be unsustainable and liable to be set aside.

9. For reasons recorded above, this petition is converted into an appeal and allowed. The impugned judgment of the Federal Service Tribunal dated 16.12.2019 is set aside. The punishment imposed by the department is restored and affirmed.

ISLAMABAD.

18.12.2020.

Zubair/*

~~Not~~ *Approved For Reporting'*