IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE SARDAR TARIQ MASOOD
MR. JUSTICE IJAZ UL AHSAN

CIVIL APPEAL NO.497 OF 2020
(Against the order dated 02.10.2018 passed by the Islamabad High Court, Islamabad in ICA No. 66 of 2018).

Federation of Pakistan through Secretary Establishment Division, Islamabad.

...Petitioner(s)

Versus

Mr Shafqat-ur-Rehman Ranjha and others.

...Respondent(s)

For the Appellant(s): Mr Sohail Mehmood, Additional Attorney General for Pakistan with Mr. Sajid-ul-Hassan S.O

For Respondent No.1: Raja Saif-ur-Rehman, ASC.

Date of Hearing: 28.10.2020.

JUDGMENT

IJAZ UL AHSAN, J.- Through this single judgment, we intend to decide Civil Appeal No. 497 of 2020 (hereinafter referred to as "CA").

2. Through the instant Appeal, the Petitioner has challenged an Order of the Islamabad High Court dated 02.10.2018 (Impugned Order) passed in Intra Court Appeal (hereinafter referred to as "ICA") No. 66 of 2018 whereby the said ICA was dismissed. In the ICA, the Petitioner had challenged an Order dated 29.12.2017 passed by a Single Bench of the said Court in Writ Petition No.3234 of 2017.

3. The necessary facts giving rise to this *lis* are that the Respondent belongs to the Pakistan Administrative Service (hereinafter referred to as "PAS") and was working as Additional Secretary in the Ministry of Industries and Production (hereinafter referred to as "The Ministry"). He was suspended from service on 05.08.2016 and after an inquiry, the inquiry officer recommended that he be exonerated. The Authorized Officer accordingly exonerated the Respondent. The matter was then forwarded to the office of the Prime Minister (hereinafter referred to as "Authority"), who being unconvinced, recorded his reasons and ordered a *de novo* inquiry against the Respondent. The Respondent had been promoted to BPS-21. However, in terms of directions issued by this Court in the case reported as ***Federation of Pakistan & others vs. Dr Muhammad Arif & others (2017 SCMR 969)***, his case was reviewed as he fell within the category of officers to whom the principles laid down in the said judgment applied. His promotion was accordingly recalled. The Respondent challenged such action through a constitution petition before the High Court which was allowed to the extent that *de novo* inquiry could not have been ordered by the Prime Minister as he had earlier been exonerated from the same charges. The learned Single Judge further held that for redressal of his grievance relating to his suspension, the Respondent ought to approach the Service Tribunal. The Appellants assailed the order of the Single Judge through the ICA which was dismissed as time barred. Aggrieved, the Petitioners approached this Court.

4. Leave to Appeal was granted by this Court vide order dated 06.05.2020 in the following terms:

> *"The learned DAG contends that in the first place, the Respondent was a Civil Servant and the Writ Petition filed by him before the Islamabad High Court was not maintainable. He further contends that there were serious allegations against the Respondent on which he was issued a charge sheet and after completion of the codal formalities, the Inquiry Officer gave recommendations of exoneration of the Respondent and thereafter the Authorized Officer obtained an opinion from Ministry of Law pursuant to which the Respondent was exonerated. The competent authority in the matter was the Prime Minister and when the matter was placed before him, he ordered for the holding of a de novo inquiry. The order of the Prime Minister for holding of the de nono inquiry was challenged by the Respondent by way of filing a Writ Petition in the High Court and the same was allowed by the learned Single Judge, vide judgment dated 29.12.2017 which has been upheld by the ICA Bench through the impugned judgment dated 02.10.2018.*
>
> *2. The learned law officer contends that the question of maintainability of the writ petition was not rightly addressed by the two Courts below and further, very competency of the Prime Minister to order for the holding of the de novo inquiry was also not addressed in accordance with the law and as such illegality has been apparently committed by the learned High Court.*
>
> *3. The submissions made by the learned DAG need consideration. Leave to appeal is therefore granted to consider inter alia the same. Appeal stage paper books be prepared on the available record. However, the parties are at liberty to file additional documents, if any within a period of one month. As the matter relates to service, the Office is directed to fix the same for hearing in Court expeditiously, preferable after three months.*
>
> *4. In the meantime, the operation of the impugned order dated 02.10.2018 shall remain suspended."*

5. The main argument advanced by the learned Deputy Attorney General is that the matter at hand being a service matter is covered under Article 212 of the Constitution. Therefore, constitutional petition was not competent and the jurisdiction of the High Court was barred. He further contends that the Enquiry Officer and Authorized Officer, both, merely "*recommended*" that the Respondent be

exonerated. Therefore, no final order was passed in this matter. He contends that The Authority, being unconvinced of the findings of the Enquiry Officer and Authorized Officer, ordered *de novo* inquiry into the matter, which action it is fully empowered to take. He further contends that the letter by the Ministry of Law and Justice dated 02.06.2017 relied upon by the Respondent was withdrawn vide letter dated 13.09.2017 and the same had been communicated to the Establishment Division after which *de novo* inquiry was ordered. His submission with regards to the suspension of the Respondent is that it was rightly done as disciplinary proceedings were pending against the Respondent. However, this aspect was ignored by the learned Single Judge. Moreover, he submits that delay in filing the ICA ought to have been condoned as the matter relates to an exorbitant amount of money. In this regard, he lies on the Ministry of Law's O.M. No. 309/2017 dated 02.06.17.

6. The learned counsel for the Respondent No.1 has argued that the CSB had reinstated the Respondent therefore, the Establishment Division's letter was illegal. He further argues that his demotion and suspension were against the law and that, since the Constitution Petition as well as ICA were based on a question of enforcement fundamental rights and protection against double jeopardy, therefore, the same was maintainable. He has argued that a final order by the Authorized Officer had been passed and the same could not be revised. Learned ASC finally submits that the Respondent

had been exonerated and that, his fundamental rights are being breached by the *de novo* inquiry into the matter.

7. We have heard the learned ASCs for the parties and gone through the record. The following matters are to be settled through this judgment:-

(i) Whether *de novo* inquiry could be ordered by the Prime Minister; and

(ii) Whether the Constitution Petition and the ICA were maintainable;

Before dilating upon the crux of the matter, the legal position must be laid out clearly.

8. The Government Servants (Efficiency and Discipline) Rules, 1973 (hereinafter referred to as the "E&D Rules") at Rule 2(2) define the word "Authority" by referring to Rule 6 of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 (hereinafter referred to as "Appointment Rules"). Under Rule 6 of the Appointment Rules, for all officers belonging to BPS-20 and above or equivalent, the Appointing Authority is the Prime Minister.

9. As per Rule 5(iv) of the E&D Rules, the Authorized Officer upon receipt of the report of the Inquiry Officer or Inquiry Committee is required to determine whether the charge against the accused is proved. If it is proposed that a major penalty be imposed, the Authorized Officer is required to forward the case of the accused to the Authority along with all the requisite material forming basis for the proposed penalty. It is then upon the Authority to decide and pass the

final order. We, therefore, find that the view taken by the High Court that there was no need for the Authorized Officer to send a recommendation to the Authority is ex facie erroneous and ill founded.

10. Further, Rule 6A of the E&D Rules gives the authority the power of revision. It provides that subject to Rule 6A(2), "*the Authority may call for the record of any case pending before, or disposed of by, the authorized officer and pass such order as it deems fit*". This clarifies that the Authority is fully empowered to examine the record which it has received from the Authorized Officer and pass an appropriate order. It is pertinent to mention that in the matter in hand the Authority while ordering *de novo* inquiry recorded valid reasons for its action. The High Court recognised the fact that anything forwarded by the Inquiry Officer or the Authorized Officer was merely in the nature of a "recommendation". Therefore, there was neither lawful basis nor reason to hold that such recommendations were to be treated as final. The High Court clearly fell in error in reaching such conclusion.

11. The High Court has held that the letter dated 28.08.2017 issued by the Establishment Division is contrary to settled principles of law. However, it has lost sight of the fact that the said letter clearly states that the demotion of the Respondent is in line with the rule and principles laid down in the judgment of this Court reported as ***2017 SCMR 969***. It must also be mentioned that the memorandum of the Law

and Justice Division through which the Respondent had been exonerated, was withdrawn vide OM issued by the Law and Justice Division dated 13.09.2017 which fact appears to have escaped notice of the High Court. The exercise of power under Rule 6A is qualified by Rule 6A(2) which provides that no order shall be passed in respect of an accused unless *inter* alia, the accused has been provided with a fair opportunity to defend himself and explain his position. Perusal of the charge sheet dated 08.12.2016 reveals that the Respondent was indeed provided an opportunity to defend himself and the consequences of failing to put forward his defence i.e. ex-parte proceedings were made clear to him. Therefore, in our view all procedural formalities appear to have been adequately fulfilled and the finding recorded by the High Court are neither supported by the law nor the record.

12. The learned High Court has held that in case of the Respondent *de novo* inquiry could not have been ordered as this amounts to "*Double Jeopardy*" envisaged in Article 13 of the Constitution. Unfortunately, we are unable to agree. In our opinion, considering the facts and circumstances of the instant case the action ordered against the Respondent does not fall within the purview of double jeopardy, for the reason that, as per Rule 5(iv), a final order could only have been passed by the Authority. Admittedly, no such final order was passed. Further, the Authority had the power to agree with the recommendation, disagree with the recommendation and either pass a final order on the basis of the record before it

after providing the accused an opportunity of a hearing or if dissatisfied with the inquiry order a *de novo* inquiry for valid and recorded reasons. In the instant case valid and justifiable reasons were recorded by the Authority, and such exercise of executive power, in the absence of *mala fides* or malice could not have been interfered by the High Court. The cases relied upon by the Honourable High Court are distinguishable on points of law as well as facts. In those cases, definitive orders had been passed by the competent fora, which is not the case in the instant matter.

13. The next question before us is whether a Constitution Petition before the High Court was maintainable before the High Court in exercise of its extra ordinary jurisdiction under Article 199 of the Constitution. Having held that no fundamental right of the Respondent had been violated the answer to the said question has to be in the negative. Further, perusal of Rule 2(a)(iii) of the Civil Servants (Appeal) Rules, 1977 (hereinafter referred to as the "Appeal Rules") provides that an order by the Prime Minister is appealable to the President. In the instant petition, no such appeal was filed. Instead the Respondent chose to file a Writ Petition before the High Court. A right of appeal being available under the rules which was admittedly not availed, the High Court should have refrained from exercising in extraordinary constitutional jurisdiction which is equitable and discretionary in nature. We have found the exercise of discretion by the High Court in this matter not in consonance

with settled principles of law on the subject considering the specific facts and circumstances of this case. The issues raised clearly fell within the ambit of Federal Service Tribunal in terms of Article 212 of the Constitution of Islamic Republic of Pakistan. Consequently, we find that the impugned judgments of the High Court are unsustainable. Both the said judgments are accordingly set aside with the result that Writ Petition No.3234 of 2017 shall stand dismissed. This appeal is accordingly allowed.

ISLAMABAD
28.10.2020.
Haris, L.C.
'Not Approved For Reporting'