

62/20

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE GULZAR AHMED, CJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE YAHYA AFRIDI

(D.J)AFR

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Civil Appeal No.324 of 2020

Against the order dated 31.07.2019, passed by
the Punjab Service Tribunal, Lahore in Appeal
No.360 of 2018.

***The District Police Officer, Mianwali and ...Appellant (s)
another.***

Versus

Muhammad Hanif.

...Respondent(s)

For the Appellant (s) : Barrister Qasim Ali Chohan,
Additional A.G. Punjab
Zaka Ullah, Acting DSP, Legal,
Mianwali

For the Respondent(s) : Mr. Muhammad Bashir Khan, ASC
Syed Rafaqat Hussain Shah, AOR

Date of Hearing : 30.07.2020

JUDGMENT

IJAZ UL AHSAN, J-. This appeal arises out of a judgment of the Punjab Service Tribunal, Lahore (*"the Tribunal"*) dated 31.07.2019. Through the impugned judgment, the Tribunal modified the major penalty of compulsory retirement from service awarded to the Respondent in departmental proceedings into *"withholding of one increment for one year"*. The Respondent was directed to be reinstated into service and the intervening period was to be treated as leave of the kind due.

2. Briefly stated the facts necessary for disposal of this appeal are that the Respondent was proceeded against departmentally under Punjab Police (E&D) Rules, 1975. He

was issued a charge sheet on 14.05.2016. The department conducted an inquiry into the matter and the competent authority i.e. District Police Officer, Mianwali after issuing final show cause notice awarded him major penalty of dismissal from service vide order dated 08.06.2016. The Respondent filed a departmental appeal before RPO, Sargodha Region who took a lenient view of the matter and partially accepting the appeal converted the major penalty of dismissal from service to that of compulsory retirement. Aggrieved, the Respondent filed a service appeal before the Tribunal which was allowed in the aforementioned terms.

3. Leave to appeal was granted by this Court vide its order dated 09.03.2020 in the following terms:

"In the very inquiry held against the Respondent, the allegation of receiving bribe of Rs.20,000/- stood proved against him. It appears that the Respondent did not participate in the inquiry proceedings which were held ex parte. The departmental appeal filed by the Respondent was taken to be his response to the charge sheet by the Service Tribunal which in our view was prima facie not a correct approach adopted by the Service Tribunal. In any case, treating the receiving of bribe as a minor act has altogether made the order of the Service Tribunal questionable. We are of the view that the Member of the Service Tribunal who has passed the impugned order also needs counseling in this regard.

2. *Therefore, we while granting leave to appeal in this case to consider inter alia the matters noted above direct that a copy of this order be sent to the Chairman, Punjab Service Tribunal, Lahore alongwith a copy of the impugned order who shall deal with the same in accordance with law.*

3. *The appeal stage paper books be prepared on the available record with permission to the parties 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 expeditiously preferably after three months.

4. *In the meantime, operation of the impugned judgment shall remain suspended."*

4. The learned Additional Advocate General, Punjab appearing for the appellants contends that the Respondent had been charged with receiving a bribe/illegal gratification of Rs.20,000/- from Waseem Hayat Khan S/o Hayat Ullah Khan Niazi for obtaining a DNA test for him. A thorough departmental inquiry was conducted and the Respondent was found guilty of the charge. In the inquiry conducted by the internal Accountability Division/Cell, witnesses were summoned who testified to the effect that the Respondent had indeed received a sum of Rs.20,000/- as illegal gratification in connection with getting a DNA test processed and on his failure to do so, the concerned person had been visiting the offices seeking return of the money which he was refusing to do. Further, a CD was also produced showing incriminating conversation between the accused and the complainant. On the basis of such material, he was found guilty of the allegations. He was given an opportunity to defend himself by the appellate authority. He was heard personally in the orderly room and on his failure to defend himself or explain his conduct, the findings of the inquiry were upheld. However, for reasons best known to the appellate authority it took a lenient view and converted the penalty of dismissal from service into compulsory retirement. He maintains that the Tribunal had no basis whatsoever to reinstate the

Respondent and record a finding that the act of the Respondent constituted, "*a minor act*" and did not deserve to be visited with the extreme penalty.

5. The learned counsel for the Respondent on the other hand has defended the impugned judgment. He submits that there was nothing on the record indicating that the Respondent had received a bribe/illegal gratification, the departmental proceedings were *malafide* and the Respondent was compulsorily retired on insufficient grounds.

6. We have heard the learned Additional Advocate General, Punjab as well as learned ASC for the Respondent and have gone through the record. It is clear and obvious to us that a thorough investigation and inquiry was conducted by the department through its internal Accountability Division/Cell. Independent evidence in the form of statement of Constable Saleem Ullah was recorded who was approached by the complainant to inform the Respondent to return his money which he had obtained from him to arrange a DNA test. CD recordings produced by the complainant also showed that the version of the complainant was correct. The internal accountability mechanism of the department found enough material against the Respondent to prove him guilty. The appellate authority also heard the Respondent, gave him an opportunity to defend himself and produce whatever evidence or material he wished to produce in order to show that the findings of the inquiry were incorrect. He was unable to do so. Other than pleading that he was innocent nothing specific

was said by the Respondent at any stage to explain his position. Even the appellate authority after examination of the entire record and hearing the Respondent found him guilty of the charge. However, it proceeded to reduce his punishment of dismissal from service to that of compulsory retirement.

7. Perusal of the impugned judgment shows that the Tribunal was of the view that the departmental inquiry was defective. However, no reasons were recorded by the Tribunal to substantiate its conclusions. It was also observed that defective procedure was adopted to award major penalty to the Respondent. However, the said observation was neither elaborated nor reasoned as to how and why the Tribunal was of the view that the procedure adopted by the department was defective. After making the aforesaid unsubstantiated and unsupported observations the Tribunal concluded that:

"the quantum of punishment awarded to the appellant is not commensurate with the gravity of the charge. The appellant deserves a bit lenient treatment. The philosophy of punishment is based on the concept of retribution which may be either through the method of deterrence or reformation".

8. In a later part of the impugned judgment, the Tribunal further observed that:

"even otherwise the authorities overlooked the human factor and did not inquire the circumstances in its proper context".

We are unable to understand how, why, on what legal basis and in exercise of which jurisdiction the Tribunal came to the conclusion that the Respondent deserved lenient treatment. Further, what did the punishment awarded to

Respondent have to do with the philosophy of punishment and on what basis the Tribunal found that the act of an official of a disciplined force of receiving illegal gratification/bribe constitutes, "a minor act". Further, how the authorities overlooked the "human factor" and which circumstances were not inquired into in their "proper context" have also been left unelaborated and unanswered. Perusal of the impugned judgment *ex facie* indicates that it does not qualify as a judicial order, has been passed in a slipshod manner, without due appreciation and application of the relevant laws, rules, regulations and principles of law enunciated by this Court relating to the legal issues involved in this matter.

9. In our view, taking of illegal gratification itself is a heinous offence, requiring imposition of major penalty. The decision of Member-I of the Punjab Service Tribunal considering it a minor act and imposing a minor penalty through his impugned judgment shows that the said Member is neither sensitive nor alive to the offence of taking illegal gratification, which by law is considered serious misconduct. This Court has time and again held that accepting illegal gratification is a heinous offence and a civil servant, who is found guilty of this offence, cannot be retained in the civil service and major penalty has to be imposed on him. Reference in this regard may usefully be made to Bashir Ahmad, Line uperintendent-I Lahore vs. Water and Power Development Authority, through its Chairman, Lahore (1991 SCMR 2093), Muhammad Inam vs. Federal Service Tribunal

(1995 SCMR 37), Javed Akhtar vs. WAPDA through Chairman, WAPDA House, Lahore and 2 others (1996 SCMR 867), Ali Akbar vs. Inspector-General of Police (2001 SCMR 83), Safdar Ali vs. D.I.G. Traffic, Lahore and others (2007 PLC (C.S.) 1284), Ghulam Rasool Ranjha vs. Government of the Punjab through Chief Secretary, Province of Punjab, Lahore and others (2008 SCMR 1265) and Muhammad Shehzad Zaheer vs. Federation of Pakistan through Secretary, Establishment Division and others (2014 SCMR 1169).

10. The self styled philosophy of punishment, retribution, deterrence versus reformation etc has time and again appeared in the orders passed by the Member-I of the Tribunal. In the present case also these half cooked and clearly misunderstood concepts have been relied upon by the Member. The modus operandi adopted by the Member raises questions about his professional capacity to deal with matters of adjudicating service matters *inter alia* relating to punishment of civil servants who are involved in acts of misconduct. It appears to us that Member-I of the Tribunal has not bothered even to look into or examined the law let alone understand it in terms elaborated and settled by this Court as noted above. On the contrary, he has opted to develop his own philosophy of punishment having underpinnings of reformation and thus, allowed the respondent, who is accused of receiving illegal gratification despite being a part of a disciplined/law enforcement force, to continue in the civil service of the Province of Punjab with a minor penalty. We do not know how many more

judgments/orders on the same lines have been issued by Member-I of the Tribunal. Some of the judgments, which have come before this Court and are based on the same "philosophy" developed by Member-I of the Tribunal have been set aside by us. However, considering that the approach is inapt and amateurish with no regard or rather disregard of the letter of law and the principles enunciated by this Court to deal with such matters we are convinced that Member-I of the Tribunal lacks the requisite professional capacity and is unable to perform functions within the parameters mandated by law. His continuing to hold this position would in our opinion not be in the best interest of the litigants or the system of administration of justice.

11. In view of what has been stated above, we are in no manner of doubt that the impugned judgment of the Tribunal is not sustainable. The same is therefore set aside. Consequently, the appeal is allowed and the penalty awarded to the Respondent by the department is maintained.

12. Above are the reasons for our short order of even date which is reproduced as under:-

"We have heard the arguments of the learned counsel for the parties. For reasons to be recorded later, this appeal is allowed and the impugned judgment is set aside.

2. We may note that Member-I of the Punjab Service Tribunal, Lahore (**the Tribunal**) has exceeded his jurisdiction in passing the impugned judgment. He has on "philosophical basis" termed the act of the respondent to be "a minor act", whereas, he was directly charged for taking illegal gratification/bribe. We have also noticed a continuing trend of writing similar judgments in a number of other cases by the Member-I of the Tribunal. One such matter is incidentally fixed before us today bearing Civil Appeal No.419 of 2020 in which the judgment of the same learned Member-I has been set aside by us on similar grounds.

3. In our view, taking of illegal gratification itself is a grave offence requiring imposition of major penalty and the Member considering it a minor act, is altogether unjustifiable, more so, the Member/Tribunal could not have taken on itself the task of declaring through a quasi judicial verdict a declaration that accepting illegal gratification is a minor act to be visited by minor penalty. This conduct of the Member shows that he is perhaps not qualified or lacks aptitude to hold his current position. The Government of Punjab is therefore directed to replace him with some other qualified person whose knowledge, aptitude and experience is suitable for the post in question. In the meantime, as of today he is retrained from performing functions as a Member of the Punjab Service Tribunal."

ISLAMABAD, THE

30th of July, 2020

ZR/

NOT APPROVED FOR REPORTING