

**2021 P L C 224**

**[Lahore High Court]**

**Before Jawad Hassan, J**

**ZULFIQAR ALI**

**Versus**

**FACTORY MANAGER/INDUSTRIAL RELATIONS MANAGER, PACKAGES LTD.  
and others**

Writ Petition No.23228 of 2017, heard on 26th April, 2021.

**(a) Qanun-e-Shahadat (10 of 1984)---**

---Arts.130 & 133---Witness, production of---Presence of person producing witness---  
Procedure---One who wishes to be present while recording of evidence of his witness is  
either to record his statement and be cross-examined first or be excluded from proceedings  
while evidence of other witnesses is being recorded.

Gurdial Kaur v. Pyara Singh AIR 1962 PH 180 rel.

**(b) Bias---**

---Proof---Mere equivocal and unsubstantiated allegation of bias is no ground to question  
validity of action unless accusation is premised on solid foundation.

Parvez Musharraf v. Nadeem Ahmad Advocate PLD 2014 SC 585 rel.

**(c) Industrial and Commercial Employment (Standing Orders) Ordinance (VI of 1968)-  
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---S.15(3)---Misconduct---Scope---Besides acts and omissions enumerated under S.15(3) of  
Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, any other act  
prejudicial to good discipline also falls within the ambit of misconduct.

Akhtar Muneer v. General Tyre And Rubber Co. 2007 PLC 360 and Jyothi Home  
Industries v. Presiding Officer, Labour Court 1995 (71) FLR 706 rel.

**(d) Industrial and Commercial Employment (Standing Orders) Ordinance (VI of 1968)-  
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---S.15---Misconduct---Proof---Quantum of penalty---Petitioner was workman and  
aggrieved of his dismissal from service on allegation of misconduct---Order of dismissal

from service was maintained by Labour Court---Validity---To prove allegation of misconduct, it was incumbent upon employer to conduct proper inquiry into allegations in accordance with law---Such inquiry was duly conducted against petitioner, who was found guilty of misconduct---No option remained with employer except to proceed against him and award penalty in accordance with law---Quantum of punishment consequent upon domestic inquiry was prerogative of employer---High Court declined to interfere in dismissal order passed by employer as petitioner failed to point out any illegality and jurisdiction defect in judgments--- Constitutional petition was dismissed in circumstances.

Crescent Jute Products Ltd. Jaranwala v. Muhammad Yaqoob and others PLD 1978 SC 207; The Vice President (Admn.) National Bank of Pakistan and others v. Basharat Ali and others 1996 SCMR 201; Muhammad Akhtar v. Mst. Manna and 3 others 2001 SCMR 1700; Allah Yar v. General Manager, Railways Headquarters, Lahore and another 2001 SCMR 256; Chief Secretary, Government of Punjab, Lahore v. Muhammad Ali Saqib 2020 SCMR 1245; Messrs Siemens Pakistan Engineering Company Ltd. Karachi v. Shahzad Saleem and 5 others PLJ 1997 SC 484 and Directorate General Emergency Rescue Service 1122 Khyber Pakhtunkhwa, Peshawar v. Nizakat Ullah 2019 SCMR 640 distinguished.

General Manager, Pearl Continental Hotel, The Mall, Lahore/Rawalpindi v. Farhat Iqbal PLD 2003 SC 952; Qayyum Nawaz and 9 others v. N.W.F.P. Small Industries Development Board, Peshawar through Managing Director, Kohat Road, Peshawar and 4 others 1999 SCMR 2331; Malik Muhammad Hussain v. District Returning Officer and others 2008 SCMR 488; Mst. Wazir Begum v. Muhammad Nazir and 4 others 1999 SCMR 1299; Syed Husnain Aamer v. Tehsil Municipal Officer, Narowal 2007 PLC (C.S) 348; Abdul Aziz Khan v. Messrs Pakistan Cables Ltd., Karachi and 2 others 1977 PLC 485 and Anwar Khan Lipton Pakistan Ltd. and others 1984 PLC 1057 ref.

Fazal Shafiq Textile Mills Ltd. v. IV Sindh Labour Court and another PLD 1981 SC 225; Chairman, Employees' Old-Age Benefit Institution v. M. Ismail Munawar 1984 SCMR 143; Fouzia Ahmad v. First Women Bank Ltd. 1999 SCMR 1237; Ghulam Muhammad and another v. Mst. Noor Bibi and 5 others 1980 SCMR 933; Allah Ditta v. Ahmed Ali Shah and others 2003 SCMR 1202 and Mst. Farah Naz v. Judge Family Court, Sahiwal and others PLD 2006 SC 457 rel.

Ch. Muhammad Khalid Farooq, Advocate Supreme Court for Petitioner.

Barrister Rafay Zeeshan Javed Altaf, Advocate Supreme Court for Respondents.

Date of hearing: 26th April, 2021.

## **JUDGMENT**

**JAWAD HASSAN, J.**----Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the "Constitution"), the Petitioner has challenged the vires of judgment dated 02.05.2015 passed by the learned Punjab Labour Court No.2, Lahore (the "Labour Court") and judgment dated 06.02.2017 passed by the Punjab Labour Appellate

Tribunal, Lahore (the "Tribunal").

2. Brief facts of the case are that the Petitioner was appointed as Store Clerk with respondent No.1 in the year 1977 and was dismissed from service in terms of order dated 24.08.1983 on the allegation of misconduct. Against the aforesaid dismissal order, he filed a petition before the Labour Court which was dismissed vide judgment dated 27.06.1993. Feeling aggrieved, he filed an appeal before this Court which was accepted vide order dated 17.11.2003, wherein, he was reinstated in service and holding of fresh inquiry was ordered by an independent Inquiry Officer. As a result of this, the Petitioner joined his service on his previous assignment. In the light of order of this Court, fresh inquiry was conducted where the Petitioner was again found guilty and was dismissed on 11.02.2004 which resulted into filing of grievance petition before the Labour Court. Learned Labour Court dismissed the grievance petition of the Petitioner vide judgment dated 02.05.2015. Feeling dissatisfied, the Petitioner agitated the matter before the Tribunal which met with the same fate vide judgment dated 06.02.2017. Hence, this constitutional petition.

3. Learned counsel for the Petitioner contends that both the forums below committed material illegalities and irregularities while passing the impugned judgments; that the Respondents have not taken into consideration the fact that the Petitioner was not afforded a fair opportunity to produce his defence evidence by the biased and partial Inquiry Officer; that recording of statement of defence witness in the absence of the accused amounts to denial of proper, fair and reasonable opportunity of defence and is also against the fundamental right of fair trial as ordained under Article 10-A of the Constitution; that the allegation does not amount to misconduct under the provisions of Industrial and Commercial Employment (Standing orders) Ordinance, 1968 (the "Ordinance"). Lastly, prayed that the Petitioner be re-instated into service while setting aside the impugned judgments. He has placed his reliance upon the cases reported as "Crescent Jute Products Ltd. Jaranwala v. Muhammad Yaqoob and others" (PLD 1978 Supreme Court 207), "The Vice President (Admn.) National Bank of Pakistan and others v. Basharat Ali and others" (1996 SCMR 201), "Muhammad Akhtar v. Mst. Manna and 3 others" (2001 SCMR 1700), "Allah Yar v. General Manager, Railways Headquarters, Lahore and another" (2001 SCMR 256), "Chief Secretary, Government of Punjab, Lahore v. Muhammad Ali Saqib" (2020 SCMR 1245), "Messrs Siemens Pakistan Engineering Company Ltd. Karachi v. Shahzad Saleem and 5 others" (PLJ 1997 SC 484) and "Directorate General Emergency Rescue Service 1122 Khyber Pakhtunkhwa, Peshawar v. Nizakat Ullah" (2019 SCMR 640).

4. Conversely, learned counsel for the Respondent No.1 has vehemently opposed this writ petition on the ground that the Petitioner has failed to produce any evidence regarding allegations levelled against him; that management complied with all mandatory requirements of law and natural justice; that the Petitioner has failed to point out a singular instance of impartiality by the inquiry officer, as such, mere allegation of bias is not sufficient to constitute partiality; that the Petitioner himself boycotted inquiry and it was open to him to present a proper defense, however, he remained failed to do so; that the Petitioner was guilty of acts subversive of discipline, such conduct cannot be condoned as it is contrary to the ability of an employer to provide a safe and trouble free work environment. Lastly, submitted that well-reasoned judgments of forums below do not call for interference by this Court.

Reliance has been placed upon "General Manager, Pearl Continental Hotel, The Mall, Lahore/Rawalpindi v. Farhat Iqbal" (PLD 2003 Supreme Court 952), "Qayyum Nawaz and 9 others v. N.W.F.P. Small Industries Development Board, Peshawar through Managing Director, Kohat Road, Peshawar and 4 others" (1999 SCMR 2331), "Malik Muhammad Hussain v. District Returning Officer and others" (2008 SCMR 488), "Mst. Wazir Begum v. Muhammad Nazir and 4 others" (1999 SCMR 1299), "Gurdial Kaur v. Pyara Singh" (AIR 1962 PH 180), "Syed Husnain Aamer v. Tehsil Municipal Officer, Narowal" (2007 PLC (C.S) 348), "Abdul Aziz Khan v. Messrs Pakistan Cables Ltd., Karachi and 2 others" (1977 PLC 485) and "Anwar Khan Lipton Pakistan Ltd. and others" (1984 PLC 1057).

5. Arguments heard. Record perused.

6. The primary question which requires determination is whether the Petitioner has been deprived of a fair opportunity to produce his defence evidence by the Inquiry Officer. The stance of the Petitioner is that he has not been given a proper chance to lead his evidence during the inquiry proceedings. While, the plea of the Respondent No.1 is that the Petitioner, despite availing several opportunities, failed to produce his evidence and later on, when he was asked to record his examination, boycotted the inquiry proceedings and insisted upon recording evidence of his witnesses, that too in his presence, before getting himself examined.

7. It evinces from the record that as per direction of this Court when the fresh inquiry was conducted by Syed Nasir Hussain Bukhari, Advocate, Member of Legal Branch of the Respondent's organization, a notice was issued to the Petitioner, who appeared and sought adjournment on the ground that he wishes to appoint his representation which was allowed. On 26.12.2013, the Petitioner again requested for adjournment for the same reason which was acceded to and next date was fixed for 31.12.2013. The inquiry proceedings were adjourned further for two times i.e. 03.01.2014 and 07.01.2014 for the said purpose. One witness of the Respondent was recorded in presence of the Petitioner on 07.01.2014 and upon the request of the Petitioner, the matter was kept for 09.01.2014 for cross-examination on the said witness. The remaining evidence of the Respondent was recorded uptill 15.01.2014 and proceedings were adjourned for 17.01.2014 for recording of evidence of the Petitioner which was not produced by the Petitioner even after availing three opportunities till 09.02.2014 and then he boycotted the inquiry proceedings.

8. Article 130 of Qanun-e-Shahadat Order, 1984 relates to the production and examination of witnesses which is reproduced herein below for a ready reference:

"The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court "

9. Admittedly, no specific law or rules have been cited which apply to domestic inquiries. However, it is settled principle of law that one who wishes to be present while recording of evidence of his witnesses is either to record his statement and be cross-examined first or be excluded from the proceedings while evidence of other witnesses is being recorded. Reference may be made upon the judgment passed by Punjab Haryana High

Court in case reported as "Gurdial Kaur v. Pyara Singh" (AIR 1962 PH 180) wherein it has been observed that:

"It is true that the parties are entitled to select their own witnesses and the order in which they are to be examined but at the same time, the spirit of rules definitely suggests that normally speaking the plaintiff must first come in the witness-box to depose to his case to be followed by corroborative evidence. I am not unaware of the practice which has somehow developed and is in vogue in this State, according to which the parties generally come into the witness box in the end of their evidence so as to be able to fill in any blanks or lacuna which may have been left by their corroborative evidence."

10. The recording of statements of the witnesses of a party prior to recording of its own evidence is not justifiable under the procedure followed by the Courts. This rule has its genesis in common law and is of fundamental importance in administration of justice as pointed out in Sir John Woodroffe and Syed Amir Ali's treatise "Law of Evidence" that to allow a party to remain present during the examination of its witnesses when such party later wishes to be examined, would result in filling up any blanks or lacunae left out in the evidence already given as the party would be privy to the statements and cross-examination made on those witnesses. No justifiable reason has been assigned by the Petitioner as to why his witnesses' evidence should have been recorded before recording of his own evidence. So, the stance of the Petitioner, that he was deprived of his right of a fair inquiry, has no force as he himself boycotted the inquiry proceedings instead of producing the evidence. Said failure of the Petitioner also validates the presumption that he had no evidence to substantiate his version.

11. The Petitioner has also challenged the validity of the inquiry proceedings with the accusation that the Inquiry Officer held a bias against him. He agitated that the Inquiry Officer was neither independent, nor impartial; rather he was a Senior Law Officer of the Respondent No.1 and was also appearing in the Courts as an Advocate representing the Respondent Factory. In the instant case reasonable opportunities were given to the Petitioner to produce evidence in order to rebut the allegation of misconduct. In order to take an action against the Petitioner for misconduct, the employer was required to follow the mandatory procedure elaborated in Clause (4) of Standing Order 15 of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1969. Said provision is reproduced herein below for ready reference:

"(4) No order of dismissal shall be made unless the workman concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances alleged against him. The approval of the Manager of the establishment or where there is no manager, of the employer, is required in every case of dismissal and, when circumstances appear to warrant it the manager or the employer may institute independent enquiries before dealing with charges against a workman."

The only legal stipulation specified in the aforementioned clause is the requirement of giving a reasonable opportunity to the accused for explaining the allegation of misconduct. As already stated, in the present case, such an opportunity was given to the Petitioner but he

did not avail the same and preferred to boycott the proceedings; therefore there is no substantial violation of said provision. The Petitioner has also failed to highlight any particular act or conduct of the Inquiry Officer on the basis of which the allegations of bias or prejudice by the Inquiry Officer against him could be established. It is evident from the record that Inquiry Officer, during the course of inquiry, accepted all the applications and requests made by the Petitioner. In such circumstances, there does not appear any plausible justification for the allegation of biasness against the Inquiry Officer. Mere equivocal and unsubstantiated allegation of bias is no ground to question the validity of an action unless the accusation is premised on a solid foundation. The August Supreme Court of Pakistan in "Parvez Musharraf v. Nadeem Ahmad Advocate" (PLD 2014 SC 585), held that "The perception of bias, without there being actual bias, as noted above is also recognized by our law but again it has to be founded on a more solid footing than allegations which are imaginary or which are based on a subjective opinion divorced from objective reality".

12. The plea that Inquiry Officer was an employee of the management also lacks strength as no proof has been placed on record to corroborate that fact. The documents which were referred by the learned counsel of the Petitioner during the course of arguments only reflected that Inquiry Officer marked his presence as a representative of the Company which was part of his job description. It is settled law that appointment of the Inquiry Officer is the prerogative of the management and the accused official cannot press for appointment of an Inquiry Officer of his own choice. The Petitioner also could not elaborate that the inquiry was conducted in a manner contrary to the applicable principles of natural justice. Besides, the order of this Court in the earlier round of litigation reflects that the request of the Petitioner qua the appointment of a new Inquiry Officer had already been acceded to. The relevant portion of the said order is reproduced herein below:

"3. With the concurrence of learned counsel for the parties appeal is accepted, impugned judgment is set aside and appellant is re-instated into service and Respondent is allowed to hold fresh inquiry. The Respondent would appoint independent inquiry officer but Sheikh Khalil Ahmad would not be appointed as Inquiry Officer. As regards back benefits the same would depend upon result of fresh inquiry. The Respondents are directed to conclude the inquiry within three months. No order as to costs." (Emphasis provided)

13. So far as the contention of the Petitioner with regard to harsh punishment is concerned, it is observed that the allegation against the Petitioner was that on 24.05.1983 at about 3 P.M. he threw his application for leave across the table of Mr. Fayyaz Ahmad Store Officer and when said officer objected to the way of submission of the application, the Petitioner asked to sign the same by using foul language and further threatened him that in the near future he would be set at right. The said allegation comes within the domain of misconduct. The term 'misconduct' is explained under section 15(3) of the West Pakistan Industrial and Commercial Employment (Standing Order) Ordinance, 1968 as under:-

"15(3). The following acts and omissions shall be treated as misconduct:-

(a) wilful insubordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior;

- (b) theft, fraud, or dishonesty in connection with the employer's business or property;
- (c) wilful damage to or loss of employer's goods or property;
- (d) taking or giving bribes or any illegal gratification; Writ Petition No.693/2011 7
- (e) habitual absence without leave or absence without leave for more than ten days;
- (f) habitual late attendance;
- (g) habitual breach of any law applicable to the establishment;
- (h) riotous to disorderly behaviour during working hours at the establishment or any act subversive of discipline;
- (i) habitual negligence or neglect of work;
- (j) frequent repetition of any act or omission referred to in clauses (i); (k) striking work or inciting others to strike in contravention of the provisions of any law, or rule having the force of law. " (Emphasis provided)

14. Besides the acts and omissions enumerated under section 15(3) of the Ordinance ibid any other act prejudicial to the good discipline also falls within the ambit of misconduct. Karachi High Court in Akhtar Muneer v. General Tyre And Rubber Co. (2007 PLC 360) has supported this view in the words that "the word "misconduct" means improper conduct of an employee, the acts and omissions listed in Standing Order 15 the Ordinance, 1968 are illustrative because any act which is prejudicial to the good discipline could form the disciplinary action. Similarly the Karnataka High Court in Jyothi Home Industries v. Presiding Officer, Labour Court (1995 (71) FLR 706) has defined the expression misconduct as "wrong or improper conduct. It means intentional wrong doing. It would include unlawful behaviour. A conduct which is blameworthy would be misconduct. If by the commission or omission of the acts of the employee, the employer suffers loss or it generates an atmosphere destructive of discipline, the same is misconduct".

15. There is no cavil to the proposition that, to prove an allegation of misconduct, it is incumbent upon the employer to conduct a proper inquiry into the allegations in accordance with law. Such an inquiry is duly conducted in the instant case. In the afore-noted facts and circumstances of the case this Court is of the considered view that the Petitioner has not been able to make out a good case. When an employee is found guilty of misconduct, no option remains with the employer except to proceed against him and award penalty in accordance with law. Furthermore, it is settled law that quantum of punishment consequent upon a domestic inquiry is prerogative of the employer; hence, this plea is answered in negative.

16. The contention of learned counsel for the Petitioner that second show cause notice was not given to the Petitioner which has caused great deal of injustice to his case is also of no significance as the Hon'ble Supreme Court of Pakistan in Dawood Cotton Mills Ltd. v. Guftar Shah and another" and "Fazal Shafiq Textile Mills Ltd v. IV Sindh Labour Court and another" (PLD 1981 SC 225), has laid down that "neither the giving of the second show-cause notice nor the supplying of the report of the Enquiry Officer is a requirement of the

rules of natural justice". Similar view is reiterated by the august Court in Chairman, Employees' Old-Age Benefit Institution v. M. Ismail Munawar (1984 SCMR 143) and Fouzia Ahmad v. First Women Bank Ltd. (1999 SCMR 1237).

17. The findings of the Labour Court as well as the Tribunal are concurrent, therefore, do not call for any interference by this Court as these are findings of facts recorded by the forums below after due assessment of evidence. Reference may be made to the case law reported as "Ghulam Muhammad and another v. Mst. Noor Bibi and 5 others" (1980 SCMR 933). The relevant portion of the judgment is reproduced herein below:-

"we agree with the view taken by the High Court that it could not in its limited constitutional Jurisdiction to interfere with the concurrent findings against the petitioner-departments on what was essentially a question of fact."

Further reference may be made to the cases reported as "Allah Ditta v. Ahmed Ali Shah and others" (2003 SCMR 1202) and "Mst. Farah Naz v. Judge Family Court, Sahiwal and others" (PLD 2006 Supreme Court 457).

18. Learned counsel for the Petitioner has failed to point out any illegality and jurisdictional defect in the impugned judgments. The case law relied on by the Petitioner is altogether different and distinguishable from the facts of the instant case.

19. Sequel to the above, this writ petition being devoid of any force is dismissed and the impugned judgment passed by forum below, respectively are upheld. No order as to cost.

MH/Z-9/L

Petition dismissed.