

SUPREME COURT OF PAKISTAN
(Review Jurisdiction)

CONSTITUTIONAL BENCH:

Justice Amin-Ud-Din Khan, Senior Judge
Justice Jamal Khan Mandokhail
Justice Shahid Bilal Hassan
Justice Shakeel Ahmad
Justice Ali Baqar Najafi

C.R.P.557 OF 2020 IN C.A.353 OF 2010

(For review of the order dated 16.03.2020 passed by this Court)

Gul Tiaz Khan Marwat

...Petitioner(s)

Versus

The Registrar Peshawar High Court, Peshawar & others ...Respondent(s)

For the Petitioner(s) : Mr. Saleem Ullah Khan Ranazai, ASC
alongwith petitioner

For the Respondent(s) : Mr. Shah Faisal Ilyas, Addl. AG, KPK.
Mr. Khalid Rehman, ASC
Mr. Wajid Ali Khan, Director
(Regulations).
(via video link from Peshawar)

Date of Hearing : 09.05.2025

JUDGMENT

Shakeel Ahmad, J.- Through this petition filed under Article 188 of the Constitution of Islamic Republic of Pakistan, 1973, (the “**Constitution**”) read with order XXVI Rule 1 of the Supreme Court Rules 1980, review has been sought of the judgment dated 16.03.2020 passed by this Court whereby Civil Appeal No.353 of 2010 arising out of Constitution Petition No.1123 of 2009, filed by the petitioner challenging the validity of the judgment/order dated 06.03.2009, passed by the Peshawar High Court in Writ Petition No.1065 of 2007, was dismissed.

2. The facts necessary for the decision of the instant review petition are that the petitioner, who was an employee of Peshawar High Court, filed three Constitution Petitions, (i) challenging his removal from service (ii) seeking amendment in Peshawar High Court Ministerial Establishment (Appointment and Conditions of Service) Rules, 1989 to the extent that they provide court employees a remedy of appeal; and (iii) seeking issuance of directions to the Registrar, Peshawar High Court, to grant the petitioner TA/DA for certain periods related to his posting. Through a consolidated

judgment dated 06.03.2009, the learned Peshawar High Court dismissed all these writ petitions as being not maintainable against order(s) passed by the Chief Justice of the Court. Aggrieved, the petitioner filed appeals in which leave was granted vide order dated 19.04.2010 in the following terms.

"Inter alia contends that the Peshawar High Court Ministerial Establishment (Appointment and Conditions of Service) Rules, 1989, do not provide any right of appeal and the learned High Court of Peshawar has dismissed petitioner's constitution petition without adverting to this aspect; that although petitioner was in the Ministerial Staff of the High Court but he was posted in the office of District & Sessions Judge Kohistan; that the said District is at a distance of 800 miles from D.I. Khan; that the alleged absence without leave is relatable to that period; that petitioner had set his application in time but that reached to the Competent Authority late; that petitioner was under stress as his son was mentally disabled and without considering the applications for leave and the circumstances alluded to above, petitioner has been awarded major penalty of compulsory retirement from service although he had an unblemished record of service stretching over a period of 25 years. He added that the remaining two charges were not serious enough to warrant the said penalty.

2. Having heard petitioner's learned counsel at some length, leave is granted to consider whether the petitioner could have been awarded major penalty in the circumstances to which reference has been made above..."

3. After providing the right of audience, this Court, vide consolidated Judgment dated 16.03.2020, dismissed the appeals filed by the petitioner, along with other connected appeals involving identical questions of law and facts. It would be advantageous to reproduce the concluding para of the impugned judgment, now under review, hereunder:

"In light of the foregoing discussion, the matters detailed in paragraphs 2 to 11 above are decided as under:-

(a) All the appeals and civil petitions are dismissed, except for Civil Petition No.1439/2018 which is converted into an appeal and allowed and the impugned judgment is set aside (and the short order of even date is amended accordingly);

(b) Constitution Petitions No.4 and 12/2016 are dismissed as they involve personal grievances and no question of public importance with reference to the enforcement of any fundamental rights is made out;

(c) Constitution Petition No.143/2012 is dismissed as the prayers sought for are decision to be taken by the relevant authorities, in which we do not wish to interfere at this stage;

(d) As the case of Ch. Muhammad Akram supra has been overruled, therefore Criminal Original Petition No.125/2019 is dismissed as having been rendered infructuous; and

(e) Since all the main appeals and petitions have been finally decided, therefore the civil miscellaneous applications are dismissed as having been rendered infructuous."

4. Hence this review petition.

5. At the very outset, learned counsel appearing on behalf of the petitioner drew our attention to Rule 12 of the Peshawar High Court Ministerial Establishment (Appointment and Conditions of Service) Rules 1989 (hereinafter referred to as the "**1989 Rules**"), read with the provisions of the [Khyber Pakhtunkhwa] Civil

Servants (Appeal) Rules, 1986 (hereinafter referred to as the “**1986 Rules**”). He submitted that the said provisions when read together, clearly provide the petitioner with a right of appeal in cases where the order of removal has been passed by the Chief Justice himself. He further stated that this Court, while deciding the petitioner’s appeal, failed to take the notice of the same, which resulted in gross miscarriage of justice, thereby warranting interference. During the course of arguments, Mr. Khalid Rehman, ASC, and Mr. Shah Faisal Ilyas, the learned Additional Advocate General (AAG), appearing on behalf of the respondent, when confronted with the applicability of the statutory provisions relied upon by the learned counsel for the petitioner, conceded that the impugned judgment under review, to the extent it operates to the detriment of the petitioner, along with the order of the High Court dismissing the Constitution Petition, may be set aside, and the case be remanded to the Hon’ble Chief Justice of the Peshawar High Court for placing petitioner’s appeal before a bench of judges to be nominated by him for a decision in accordance with law.

6. Heard both sides and record pursued.
7. Before examining the plea raised by the reviewee-petitioner, it will be advantageous to reproduce the Appendix of the High Court of West Pakistan (Civil Services) Delegation of Powers Rules, 1960 (hereinafter referred to as the “**Rules 1960**”), Rule 12 of the 1989 Rules and Rule 3 of the 1986 Rules:

APPOINTMENT, PUNISHMENT AND TRANSFER OF UNDER THE
HIGH COURT OF WEST PAKISTAN, LAHORE.

Appellate authority in case of reduction in rank, removal or dismissal.	Appellate authority- in respect of punishment less than reduction in rank, removal or dismissal.	Transferring authority.	Controlling Officer for Travelling Allowance.	Remarks
6	7	8	9	10

OF WEST PAKISTAN, LAHORE AND ITS BENCHS AND CIRCUITS

Officers

...

...

Chief Justice. Registrar/Additional Registrar.

In the case of a non PCS Officer a Bench of two Judges to be nominated by the Chief Justice, and the Provincial Government in the case of a PCS

Provincial Government in the case of a PCS Officer, and in any other case, a Bench of two Judges to be nominated by the Chief Justice.

Chief justice. Registrar/Additional Registrar.

Officer.

A Bench of two judges to be nominated by the Chief Justice.

A Bench of two Judges to be nominated by the Chief Justice.

Chief Justice. Registrar/Additional Registrar.

12. General Rules:- In all other matters not expressly provided for in these rules or any other rules hereafter made, the rules made or deemed to have been made by the Government under the Khyber Pakhtunkhwa Civil Servants Act, 1973, shall *mutatis mutandis* apply to the holders of posts under these rules

3. Right of Appeal:-(1) A civil servant aggrieved by an order passed or penalty imposed by the competent authority relating to the terms and conditions of service may, within thirty days from the date of communication of the order to him, prefer an appeal to the appellate authority:

Provided that where the order is made by the Government, there shall be no appeal but the civil servant may submit a review petition:

Provided further that the appellate or the reviewing authority, as the case may be, may condone the delay in preferring the appeal or the review petition, if it is satisfied that the delay was for the reasons beyond the control of the appellant or that the earlier appeal or review petition was not addressed to the correct authority.

It would also be appropriate to refer to Rules 16 and 22 of the Peshawar High Court Ministerial Establishment (Appointment and Conditions of Service) Rules, 2020 (hereinafter referred to as the "**Rules 2020**") as follows:

16. Appeal:- Where any order affecting the terms and conditions of service of a member of the Establishment is passed or any penalty imposed by the Registrar, an appeal shall lie from his order to the Chief Justice, and where any such order is passed or any penalty is imposed by the Chief Justice, otherwise than an appeal from an order of the Registrar, an appeal shall lie to a bench of three senior most Judges of the Court:

Provided that an appeal may be filed within thirty days from the date of order complained of

22. Repeal:- The Peshawar High Court ministerial establishment (Appointment and Condition of Service) Rules, 1989 are hereby repealed, but such repeal shall not affect anything duly done or suffered under those rules.

8. The record reflects that Civil Appeal No.353 to 355 of 2010 came up for hearing before this Court on 02.06.2016. On the said date, the learned AAG was directed to seek instructions of the Hon'ble Chief Justice of Peshawar High Court regarding the applicability of the relevant rules, particularly with reference to whether the right of appeal is available to the appellant under Rule 12 of the 1989 Rules, read with the provisions of 1986 Rules, as the right of appeal has been provided under Rule 3 thereof, and such rules seemingly *mutatis mutandis* apply to the petitioner's case, wherein a forum has been created for the purposes of providing an appeal to the appellant in a situation where the order of removal has been passed by the Hon'ble Chief Justice himself. However, the learned counsel appearing on behalf of the respondents and the

learned AAG failed to seek fresh instructions from the Chief Justice. However, after consulting the said provisions of the rules, they agreed that under Rule 12 of the 1989 Rules read with Rule 3 of the 1986 Rules, the right of appeal had been provided to the petitioner, and such rules would *mutatis mutandis* apply to the petitioner's case, which was to be heard by a Bench of two judges to be nominated by the Chief Justice, as per the statement showing delegation of powers of the Gazetted and non-Gazetted establishment under the Rules of 1960. However, in exercise of powers conferred under Article 208 of the Constitution, the Peshawar High Court with the approval of the Governor Khyber Pakhtunkhwa, has made the Rules of 2020, and in terms of Rule 16, if any order affecting the terms and conditions of service of a member of the establishment is passed or any penalty is imposed by legislation, an appeal shall lie to the Chief Justice. Where any such order is passed or penalty imposed by the Chief Justice, other than an appeal from an order of the Registrar, an appeal shall lie to a Bench of three senior most judges of the Court. Furthermore, while the 1989 rules stand repealed, under Rule 22 of the 2020 Rules such repeal shall not affect anything duly done or suffered before these rules.

9. We find from the record that the statutory rules referred to above escaped the notice of this Court while deciding the fate of the appeals No. 353 to 355 filed by the petitioner, despite directions of the Court and specific order passed on 26.06.2016 regarding the applicability of these rules and their effect on this case, which resulted in gross miscarriage of justice. The Peshawar High Court also failed to consider this important legal and factual aspect of the case and thus was misled.

10. It is by now settled that a reviewable ground would essentially be one where the decision was *per incuriam* or where error is so evident that it is floating on the surface of the record, having substantial impact on the final outcome of the case as happened in the instant case, thereby constituting a valid ground for review.¹ We therefore allow this review petition, set aside the judgment dated 16.3.2020, passed by this Court in Civil Appeal No. 353 of 2010 to the extent of petitioner and order dated 06.03.2009 passed by the Peshawar High Court, Peshawar in Constitution Petition No. 1065 of 2009, whereby the writ petition

¹ Government of Punjab v. Aamir Zahoor ul Haq (P L D 2016 Supreme Court 421) and Nadia Naz v. The President of Islamic Republic of Pakistan (P L D 2023 Supreme Court 588)

filed by the petitioner was dismissed, and the matter is remanded to the Hon'ble Chief Justice of the Peshawar High Court, Peshawar, to place the petitioner's appeal before the judges to be nominated by him for decision in accordance with law.

C.M.A No. 2803 of 2021 in C.R.P No. 557 of 2020

(Application for condonation of delay on behalf of petitioner)

11. This petition is barred by one day, however, keeping in view, the facts and circumstances of the case, the grounds urged in the petition also seem to be genuine and are duly supported by a sworn affidavit, and therefore, in the interest of justice we condone the delay of one day in filing the appeal.

Judge

Judge

Judge

Judge

Judge

Islamabad

APPROVED FOR REPORTING

*M.Rizwan/Rameen Shahram, L.C./**

Announced in open Court at Islamabad on_____.

Judge