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IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

Present

Mr. Justice Umar Ata Bandial
Mr. Justice Munib Akhtar

Civil Appeal No. 1226 of 2016

(On appeal from the order dated
15.10.2015 passed by the FST, Ibd.
in A.No.3214(R)CS/2012)

**Chief Commissioner Inland Tax,
through RTO, Zone-1, Federal Board
of Revenue, Hyderabad and others**

...Appellants

Vs

**Ghulam Mustafa Mari Ex-Inspector,
Income Tax, Revenue Division, FBR,
Hyderabad.**

...Respondent

For the appellant: : Mr. Imran Fazal, ASC.
Mr. Muhammad Siddique Mirza, ASC.
Mr. M.Amin Shah, FBR.

For the respondents: : Mr. Muhammad Shoaib Shaheen, ASC.

Date of hearing: : 12.03.2019

ORDER

Umar Ata Bandial, J.- The respondent was appointed as Inspector in the Income Tax Department on 27.10.1994 alongwith ten other persons who had been recommended by the Prime Minister Secretariat vide letter dated 28.9.1994. After having completed codal formalities including issuance of final show cause notice and charge sheet, the respondent was removed from service on 15.01.2003 for failure to produce his Bachelor Degree which was a condition of eligibility for appointment to the said office. The respondent's recourse to departmental authorities, the Federal Service Tribunal and this Court failed to render fruit. The judgment of this Court dated 21.10.2005 held as under:

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"This is an admitted fact that petitioner was not a graduate at the time of appointment therefore the contention raised by the learned counsel that notwithstanding the defect in the appointment at initial stage due to the deficiency in basic qualification required for the post, the petitioner, therefore, having fulfilled the requisite qualification, has acquired a vested right to continue in the service and his appointment having the protection of law, would not be subsequently rescinded has no substance. The procedural irregularity may not effect an inherent appointment may not be curable due to the deficiency in the qualification. The petitioner without having the requisite qualification for the post, obtained appointment in an improper manner and consequently no right could be created in his favour to retain illegal gain by mere efflux of time. The law laid down by this Court in the judgment referred above, would not be applicable to the present case being based on distinguishable facts. The learned counsel for the petitioner has not been able to convince us that any substantial question of law of public importance was involved in the present position. The same is accordingly dismissed. Leave is refused".

2. Our aforementioned judgment attained finality and thereafter the matter became a past and closed transaction *inter se* the parties to the *lis*. Again on the initiative of the Prime Minister Secretariat vide letter dated 12.11.2008, the F.B.R. re-opened the case of the respondent and reinstated him vide letter dated 18.11.2008. After remaining in service for some 2½ years the respondent was informed vide letter dated 26.07.2012 that he stood removed from service by restoration of the erstwhile penalty imposed on him on 15.01.2003. The F.B.R's. letter dated 26.07.2012 runs into eleven pages and gives detailed reasons for the restoration of the respondent's punishment. The respondent failed to secure relief before the departmental forum but was granted a right of de-novo inquiry by the impugned judgment of the learned Federal Service Tribunal dated 15.10.2015.

3. The question that has engaged our minds is how the executive authorities could re-open a case after it had been decided

finally by a judgment of this Court dated 21.10.2005 delivered inter parties in the respondent's C.P.689 of 2004 titled *Ghulam Mustafa Mari, Ex-Inspector, Income Tax vs. Central Board of Revenue through its Chairman, Islamabad and another*. Further action in the matter is barred by *res judicata* and the doctrine of past and closed transaction. The learned counsel for the respondent has asserted to the contrary by relying upon a judgment which is also referred by the learned Tribunal in its impugned judgment namely *Sajjad Ahmed Javed Bhatti vs. Secretary, Establishment Division, Islamabad and others* (1996 SCMR 628). That was a case where an officer complained that although the view of the Central Selection Board ("**CSB**") had been endorsed by the learned Tribunal and this Court but actually that view was based on a misunderstanding and had been subsequently corrected. His application under section 12(2) C.P.C. filed in that case was dismissed by the learned Tribunal as well as by this Court. However, in passing it was mentioned that the CSB realized its earlier mistake and rectified the same, that the earlier dismissal of the petition by this Court filed by the applicant did not come in the way. That passing remark does not form the basis of the judgment affirming the Tribunal and lays down no rule of law. In the background of a section 12(2) C.P.C. application alleging facts involving fraud and misrepresentation that were admitted by the CSB a concession appears to have been granted by the said judgment. However, that is not a precedent authorizing an executive authority on a presumed mistake to unilaterally ignore a judgment of this Court. In the circumstances, we are not inclined to agree with the view taken by the learned Tribunal in its impugned judgment dated 15.10.2015. Consequently, we allow this appeal with no order as to costs.

Bench-IV

Islamabad

12.03.2019

Not approved for reporting

Saeed Aslam

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