

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Amin-ud-Din Khan
Mr. Justice Muhammad Ali Mazhar
Mr. Justice Irfan Saadat Khan

Civil Petitions No.187-Q and 188-Q of 2024

Against the order dated 27.06.2024 passed in R.A.No.12/2024 and judgment dated 16.05.2024 passed in S.A.No.41/2024 by the Balochistan Service Tribunal, Quetta.

The Government of Balochistan, through its Secretary Energy Department, Quetta and another	...Petitioners (In both cases)
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Versus

Muhammad Yasir	...Respondent (In both cases)
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For the Petitioners:	Mr. M. Ayaz Khan Swati, Addl. AG Balochistan (in both cases)
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For the Respondent:	N.R.
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Date of Hearing:	04.10.2024
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JUDGMENT

Muhammad Ali Mazhar, J. These Civil Petitions for leave to appeal are directed against the Order dated 27.06.2024, passed in Review Application. No.12/2024, and judgment dated 16.05.2024, passed in main Service Appeal No.41/2024, by the learned Balochistan Service Tribunal, Quetta ("Tribunal").

2. Indeed the Civil Petition No.187-Q/2024 is directed against the order of the Tribunal rejecting the review petition, whereas the Civil Petition No.188-Q/2024 has been brought to challenge the main judgment in the service appeal but the petition is barred by 25 days and C.M.A No.200-Q/2024 has been filed for condonation of delay. The facts leading to the present controversy between the parties are that some vacant seats, including the post of Junior Clerk, were advertised through vernacular newspapers by the Energy Department,

Government of Balochistan, Quetta, on 18.04.2023 and the date of test for participating by the potential candidates was 24.06.2023. The respondent appeared for the aptitude test and interview and was declared a successful candidate for the post of Junior Clerk and after observing all codal formalities, his appointment order, dated 08.08.2023, was issued and the respondent also submitted joining report. However, a few weeks later, the department realized that there was no position available for the present respondent; hence, his salary was stopped without showing any cause. Being aggrieved, the respondent filed a departmental appeal which remained unattended. Therefore, the respondent approached the Tribunal and prayed for directions to restore the posting of the appellant/respondent. The learned Tribunal, *vide* Judgment dated 16.05.2024 allowed the Service Appeal. Thereafter, a Review Petition was also filed by the petitioner which was also dismissed on 27.06.2024. At present, out of the two aforesaid civil petitions, one has been preferred against the main judgment in service appeal while another has been moved to challenge the Order in review.

3. The learned Additional Advocate General, Balochistan, argued that the learned Tribunal failed to take into consideration that the post in question was not duly sanctioned in the annual budget and it is only after proper approval and sanction that the salary is activated through the System Analysis Program (SAP) by the office of the Accountant General, Balochistan, as well as the concerned District Treasury Officer. It was further contended that the respondent has no legal right to the post, as two posts were mistakenly advertised, and appointment letters were issued due to a lack of coordination between the concerned departments. Therefore, due to this technical error, no illegal benefit can be extended. He further averred that only one post of Junior Clerk is available in the Sibi Zone, and the Energy Department has no additional post in the office of the Electric Inspector, Sibi, to accommodate the present respondent. Directions were sought from the Finance Department, Government of Balochistan, to create a post.

4. We have heard the arguments of the learned counsel. What was the bone of contention in the main service appeal? The respondent / appellant pleaded before the learned Tribunal in his

service appeal that the vacant position was duly advertised, and a test and interview were conducted. Subsequently, he was appointed through the proper channel; therefore, he is entitled to all the perks and benefits of the position, while the department wrongfully withheld his salary without issuing a show cause notice or providing an opportunity for hearing. Quite the reverse, the department opposed the service appeal, and took the plea before the learned Tribunal that they had invited applications for appointment on different posts, including the post of Junior Clerk, by means of an advertisement. Eligible candidates appeared for the test, and interviews were conducted, in which the respondent/appellant also qualified for the written test and interview for the post of Junior Clerk. However, in reality, there was only one vacant post of Junior Clerk which was inadvertently advertised as two posts under the reserved quota of the Sibi Division.

5. The record reflects that after complying with all codal formalities, an appointment order was issued to the respondent on 08.08.2023, for the second post of Junior Clerk (B-11) as per advertisement. The respondent submitted his joining report, and after fulfilling all requisite formalities, the relevant documents were forwarded to the Accountant General's Office, Balochistan, and the District Treasury Office for salary activation on SAP. However, while examining the Budget Book 2023-24, it was revealed that only one post of Junior Clerk (B-11) was available under the initial recruitment quota for the Sibi Division, and according to the merit position, candidate Syed Waseem Abbas Shah, who secured 87 marks, was ranked first on the merit list, while the present respondent (Muhammad Yasir), who secured 86 marks, was ranked second. Consequently, with the approval of the competent authority, the appointment order of the respondent was withdrawn *vide* Office Order dated 27.09.2023. The learned Tribunal set aside the appointment cancellation letter and reinstated the respondent in service with all back benefits. Simultaneously, it remanded the matter for the purpose of determining whether the respondent was unemployed or gainfully employed during his time out of service, and in this regard, the Department was allowed to verify the appointment order, the recruitment process, and academic credentials. The payment of back benefits was made contingent on the outcome of this summary inquiry.

6. It is an admitted position that in the competition process, the respondent bore no fault. He applied for the post according to the prescribed parameters and guidelines as delineated in the advertisement. He then appeared in the test and interview and was declared successful. Thereafter, he was issued an appointment order and he joined accordingly. So in all fairness, in the entire scenario, the respondent cannot be blamed or reproached for committing any illegality or securing the job through unfair means, fraud, or misrepresentation. The respondent was at Serial Number 02 on the merit list and was appointed on 08.08.2023, but his appointment order was withdrawn/cancelled on 27.09.2023 without any show cause notice or any opportunity to be heard. This action was in sheer contravention of Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution"), and lacked due process of law. To enjoy the protection of law and to be treated in accordance with the law is a basic fundamental right of every citizen within the precincts and confines of Article 4 of the Constitution which, in fact, assimilates the doctrine of equal protection of law and accentuates that no action detrimental to life and liberty can be taken without due process. In our view, public functionaries are supposed to execute and perform their duties in good faith, honestly, and within the bounds of their legitimately recognized powers, ensuring that individuals are treated in accordance with the law. The principles of natural justice require that the delinquent should be afforded a fair opportunity to converge, explain, and contest the claims against him before he is found guilty and condemned. The principles of natural justice and fair-mindedness are grounded in the philosophy of affording a right of audience before any detrimental action is taken, in tandem with its ensuing constituent that the foundation of any adjudication or order of a quasi-judicial authority, statutory body, or any departmental authority regulated under some law, must be rational and impartial, and the decision-maker has an adequate level of decision-making independence, and the reasons of the decision arrived at should be amply well-defined, just, and understandable. Therefore, it is incumbent that all judicial, quasi-judicial, and administrative authorities should carry out their powers with a judicious and evenhanded approach to ensure justice according to the tenor of law and without any violation of the principles of natural justice. In the case of Tariq Aziz-ud-Din, Human Rights Cases

Nos. 8340, 9504-G, 13936-G, 13635-P & 14306-G to 14309-G of 2009 (2011 PLC (C.S.) 1130), this Court held that all judicial, quasi-judicial and administrative authorities must exercise power in a reasonable manner and also must ensure justice as per the spirit of law and the established instruments regarding the exercise of discretion [Ref: *Delhi Transport Corporation v. D.T.C. Mazdoor Congress* (**AIR 1991 SC 101**) and *Mansukhlal Vithaldas Chauhan v. State of Gujarat* (**1997(7) SCC 622**)]. Further reference is also provided through judgments authored by one of us in the cases of Junaid Wazir v. Superintendent of Police (**2024 SCMR 181**), Federation of Pakistan v. Zahid Malik (**2023 SCMR 603**), Usman Ghani v. The Chief Post Master, GPO Karachi (**2022 SCMR 745**), Capital Development Authority v. Shabir Hussain (**2022 SCMR 627**), Raja Muhammad Shahid v. The Inspector General of Police (**2023 SCMR 1135**), Muhammad Yaseen v. Province of Sindh (**2024 PLC(CS) 111**), Government of Balochistan v. Ghulam Rasool (**2024 SCMR 1155**), Inspector General of Police, Quetta v. Fida Muhammad (**2022 SCMR 1583**).

7. It cannot be overlooked that, after the issuance of the appointment order, some pivotal and decisive steps were taken by the respondent, who joined the duty after qualifying for the post on merit and the department allowed him to join without any demur. Therefore, the action of receding the joining report or withdrawing or cancelling the appointment letter was rightly found illegal by the learned Tribunal. It is the onerous and religious responsibility of the State under Article 3 of the Constitution to ensure the elimination of all forms of exploitation and to secure the gradual fulfillment of the fundamental principle, "from each according to his ability, to each according to his work". When governmental departments commit such errors and slip-ups in their departmental recruitment processes, it results in severe injustice and a violation of the State's obligation to prevent exploitation. Rather, it amounts to perpetuating exploitation, which is quite dangerous to the well-structured principle of good governance.

8. Furthermore, it is concerning that the respondent, who was appointed as just a Junior Clerk in Basic Pay Scale 11, is being mistreated, tormented, and oppressed without any fault of his own. He simply applied for the job in response to the job advertisement published. Obviously, in this entire process, the respondent had no

say or control, personally, except to apply, appear in the test, wait for the interview, and then the final result. By the looks of it, the plea of the department seems to be imaginary, but even if it were true, then why was an inter-departmental action not initiated, first and foremost, against the person who vetted the terms and conditions of the advertisement before its publication in the vernacular newspapers and who failed to note or report that instead of one post, two posts were going to be advertised. Then, the next departmental action should have been taken against the person or persons who declared him qualified in the second merit position. Last but not least, what action was taken against the person who issued the appointment letter or the officials who not only allowed the joining after completion of all formalities at the Human Resources (HR) level, but also transmitted the relevant documents for salary activation? Assuming, for the sake of the argument, that the withdrawal of the appointment letter was due to a lack of vacancy, yet there appears to be a serious lack of coordination and synchronization among the departments, who were so ignorant about the sanctioned vacancies, and despite one vacancy, selected two persons and allowed them to join. In our view, the best suited option for the petitioners, who appointed the respondent, was to rectify the alleged mistake by themselves; they should have adjusted the respondent inter-departmentally or made some concrete efforts to make good the deficiency in the sanctioned posts. The department's astute approach, in the present state of affairs, should be to first set its own house in order rather than opting for a drastic action of withdrawing a job opportunity from the respondent who, in this case, had become a scapegoat and was condemned unheard due to the weaknesses and faults of the Human Resources team engaged by the department to oversee and finalize the recruitment process. Regrettably, neither any action was triggered to inquire into the alleged mistake, nor any other action seems to have been taken against any official who was engaged in the recruitment process, while the appointment letter of the respondent was unjustifiably and incongruously cancelled/recalled. Hence, this action was rightly reversed by the learned Tribunal in its main judgment on the service appeal. Since the departmental rules for these appointments do not cover every nitty-gritty, or every single procedural detail or specification, therefore, in order to avoid any similar issues in the future, we expect that due diligence

will be exercised by the department from the inception of the recruitment process, which includes the appropriate vetting of the terms and conditions of an advertisement which is going to be released to invite applications, and the proper evaluation of sanctioned posts.

9. We further reiterate that the Civil Petition No.187-Q/2024 is directed against the Order of the learned Tribunal dismissing the Review Petition due to the petitioner's failure in pointing out any apparent error or mistake in the main judgment. No doubt, by virtue of the Balochistan Service Tribunals (Amendment) Act, 2021, the Serial Number of Section "5-A" with marginal heading "Controlling Authority" was renumbered as S. No. "5-C" and a new Section "5-A" was inserted, whereby the learned Tribunal was conferred with the power to review its final order/judgment on a review petition filed by an aggrieved party within thirty days of the order/judgment on the discovery of new and important matter or evidence which, after exercise of due diligence, was not within the knowledge of the petitioner or could not be produced by him at the time when the order/judgment was passed; on account of some mistake or error apparent on the face of record; or for any other sufficient cause; and the Tribunal may confirm, set aside, vary, or modify the judgment or order under review. The parameters of review jurisdiction have been dealt with in detail by one of us in the case of Commissioner Inland Revenue Z-III, Corporate Regional Tax Office, Tax House, Karachi v. M/s. MSC Switzerland Geneva & others (**2023 SCMR 1011 = 2023 PTD 964 = 2023 SCP 150**) wherein it was held that the review of a judgment or order may be entreated only in instances or occurrences of errors in the judgment or order, floating on the surface of record with a substantial impact on the final outcome of the *lis*, but it does not connote and entail a right of rehearing of the decided case despite there being a mindful and thoughtful decision on the point of law as well as of fact. Every judgment articulated by the Courts or Tribunals is presumed to be a solemn and conclusive determination on all points arising out of the *lis*. Mere irregularities having no significant effect or impact on the outcome would not be sufficient to warrant the review of a judgment or order, however, if the anomaly or ambiguity is of such a nature so as to transform the course of action from being one in the aid of justice to a process of injustice, then obviously a review petition may be instituted for redressal to demonstrate the error, if found

floating conspicuously on the surface of the record, but a desire of re-hearing of the matter cannot constitute a sufficient ground for the grant of review which, by its very nature, cannot be equated with the right or remedy of appeal. The clemency by dint of review is accorded to nip in the bud an irreversible injustice, if any, done by a Court, such as a misconstruction of law, a misreading of the evidence, or a non-consideration of pleas raised before a Court, which would amount to an error floating on the surface of the record, but where the Court has taken a conscious and deliberate decision on a point of fact or law, a review petition will not be competent. Review, by its nature, is neither commensurate to a right of appeal or an opportunity of rehearing merely on the ground that one party or the other conceived himself to be dissatisfied with the decision of the court, nor can a judgment or order be reviewed merely because a different view could have been taken.

10. As a result of the above discussion, we do not find any illegality or perversity in the impugned judgments of the learned Tribunal. Consequently, both the Civil Petitions are dismissed, along with the pending Civil Misc. Applications, and leave is refused.

Judge

Judge

Judge

Islamabad
04.10.2024
Khalid
Approved for reporting