

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 Petition No.531-P of 2024

Against the judgment dated 26.02.2024
passed by Khyber Pakhtunkhwa Service
Tribunal, Peshawar in Service Appeal
No.1267/2023

Government of Khyber Pakhtunkhwa through
Secretary Elementary & Secondary Education
Department, Peshawar and others ...Petitioners

Versus

Aurangzeb (Ex-Primary School Head Teacher) GPS ...Respondents
Wanna Khel Tehsil Takhtbhai District Mardan
(deceased) through L.Rs

For the Petitioners: Mr. Zahid Yousuf Qureshi, AOR
a/w Sajid Khan, Focal Person, Education
Department

For the Respondents: N.R.

Date of Hearing: 04.10.2024

Judgment

Muhammad Ali Mazhar-J. This Civil Petition for leave to appeal is directed against the Judgment dated 26.02.2024, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar ("Tribunal"), in Service Appeal No.1267/2023.

2. In fact, the deceased respondent was performing his duty in the Elementary & Secondary Education Department, Khyber Pakhtunkhwa, as Teacher. He was issued a Show Cause Notice on 16.09.2022 and was compulsorily retired from service on 12.10.2022. The respondent filed a Departmental Appeal which was also rejected

vide Order dated 07.04.2023. Being aggrieved, he filed a Service Appeal before the learned Tribunal, and by means of the impugned judgment, the learned Tribunal set aside the original and appellate orders impugned in the Service Appeal; and since he died during the pendency of his service appeal, he was treated to be reinstated in service with effect from the date of issuance of the order of compulsory retirement.

3. The learned counsel for the petitioners argued that there were many complaints against the respondent on the basis of which he was awarded the punishment, after the issuance of a show cause notice and being provided an opportunity to defend himself, but the learned Tribunal entertained the Service Appeal in utter disregard of the law and even failed to consider the record and material placed before it. It was further averred that no constitutional right of the deceased respondent was infringed upon and he was treated strictly in accordance with the law.

4. Heard the arguments. The show cause notice was issued to the respondent under the provisions of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 ("Rules"), with the direction to submit a reply within 5 days as to why the major penalty should not be imposed upon him. In our considered view, the allegations jotted down in the show cause notice, on the face of it, could not be proved without proper inquiry and without providing an opportunity to adduce evidence not only to the complainants but also to the delinquent employee for him to be able to defend himself against the charges, produce witnesses, if any, to prove his innocence, as well as avail the right to cross-examine the witnesses adducing against him. On the contrary, the competent authority imposed the major penalty of compulsory retirement from service upon the delinquent employee on the basis of a show cause notice alone, without following the principle of natural justice and due process enunciated under the law.

5. According to the Rules, the procedure of inquiry is explicated under Rule 5, which provides that the competent authority, if on the basis of its own knowledge or information placed before it, is of the opinion that there are sufficient grounds for initiating proceedings against a Government servant under these rules, it shall either **(a)** proceed itself

against the accused by issuing a show cause notice under Rule 7 and, for reasons to be recorded in writing, dispense with inquiry, provided that no opportunity of showing cause or personal hearing shall be given where (i) the competent authority is satisfied that in the interest of security of Pakistan or any part thereof, it is not expedient to give such an opportunity; or (ii) a Government servant has entered into plea bargain under any law for the time being in force or has been convicted on the charges of corruption which have led to a sentence of fine or imprisonment; or (iii) a Government servant is involved in subversive activities; or (iv) it is not reasonably practicable to give such an opportunity to the accused; or **(b)** get an inquiry conducted into the charge or charges against the accused, by appointing an inquiry officer or an inquiry committee, as the case may be, under Rule 11, provided that the competent authority shall dispense with the inquiry where (i) a Government servant has been convicted of any offence other than corruption by a court of law under any law for the time being in force; or (ii) a Government servant is or has been absent from duty without prior approval of leave, provided that the competent authority may dispense with the inquiry where it is in possession of sufficient documentary evidence against the accused or, for reasons to be recorded in writing, it is satisfied that there is no need to hold an inquiry.

6. No doubt, the competent authority has been conferred powers to dispense with the inquiry in certain circumstances, as listed above, if it is satisfied that there is no need to hold an inquiry. However, first of all, neither any satisfactory reasons were assigned at the time of issuing the show cause notice as to why the competent authority dispensed with a regular inquiry, nor was any such intention or decision communicated to the deceased employee. There must be some logical reasons for dispensing with the inquiry typically based on the nature of allegations, which should be obvious through overwhelming documentary evidence that cannot be denied. Additionally, after the proper application of an independent and impartial mind, the competent authority should reach a conclusion that no regular inquiry is required, and that punishment can be imposed based on the mere issuance of a show cause notice, submission of a reply, and affording the right of personal hearing. In this case, however, the nature of allegations in the show cause notice were as follows: *"A) You, the community, school teachers and PTC*

committee are always daggers drawn with each other's. B) You are using abusive language. C) You are taking labour from the students. D) You have not completed construction of ACR through conditional grant since three years. E) You are asking the students to massage your legs and body in the school." Though the nature of allegations levelled in the show cause notice seemed serious, but at the same time, in order to prove guilt, a full-fledged regular inquiry should have been conducted to allow the delinquent an equal opportunity to defend against the charges.

7. We have noted many times in different cases that the competent authority itself undermines and derails departmental proceedings as a result of undue haste and circumvention of due process of law and the principles of natural justice. When such unwarranted actions are challenged before the Courts and Tribunals, there is no option but to reverse and set aside such departmental actions. Due to departmental lapses, whether intentional or unintentional, and reckless attitudes, the benefit often goes to the delinquent, who is then exonerated from the cases of misconduct, and defective departmental proceedings cannot be sustained. In some circumstances, grievous cases of misconduct are dismissed due to departmental lapses. Therefore, it is imperative for the competent authority to first sift and pore over the allegations set out in the show cause notice, applying a judicious approach, to reach a just and proper conclusion as to whether the allegations require regular inquiry or not, or if the matter is so obvious, with foolproof and credible documentary evidence, that it cannot be refuted or denied by the accused employee who was called upon to submit a reply to a show cause notice, and owing to the trustworthy documentary evidence on the record, the regular inquiry can be dispensed with, but the reasons for such dispensation should be communicated to the accused employee.

8. The predominant goal of initiating a departmental proceeding, including the inquiry, is to decide whether the allegations of misconduct in the show cause notice are proven and then to confront the delinquent regarding why disciplinary action, including the imposition of a minor or major penalty, should not be taken. However, before taking such a drastic action, a fair opportunity should be provided to the employee to defend the allegations. It is a well-settled exposition of law that in departmental inquiries, the

standard of proof is based on the balance of probabilities or preponderance of evidence. A regular inquiry is commenced only when an evenhanded and fair opportunity to present a defense is offered.

9. In addition to discussing the factual and legal matrix in extenso, what is more is that the Service Tribunal, in the determination of facts and law, is the highest appellate forum with exclusive jurisdiction over matters relating to the terms and conditions of service of Civil Servants. According to the parameters laid down under Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973, this Court may grant leave to appeal against the judgment, decree, order, or sentence of an Administrative Court or Tribunal only if it is satisfied that the case involves a substantial question of law of public importance, which is otherwise *sine qua non*, but is absent in this case. Reference can be made to the dictum laid down in the case of Secretary Revenue Division v. Iftikhar Ahmed Tabbasum (PLD 2019 SC 563).

10. As a result of the above discussion, this Civil Petition is dismissed and leave is refused.

Judge

Judge

Judge

Islamabad
4th October, 2024
Mudassar
Approved for reporting.