

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.2330-L of 2019

Against the Order dated 18.06.2019
passed by Punjab Service Tribunal,
Lahore in Appeal No.3212/2016

Secretary to Government of the Punjab Law &
Parliamentary Affairs Department, Lahore and
another

...Petitioners

Versus

Ali Ahmad Khan

...Respondent

For the Petitioners:

Mr. Baleegh-uz-Zaman Ch., Addl.AG,
Punjab

For the Respondent:

Mr. Muhammad Anwar Bhanr, ASC
(through video link Lahore)

Date of Hearing:

23.10.2024

Judgment

Muhammad Ali Mazhar, J. This Civil Petition for leave to appeal is directed against the Order dated 18.06.2019, passed by the Punjab Service Tribunal, Lahore ("Tribunal") in Appeal No.3212/2016.

2. According to the ephemeral facts narrated by the petitioners, disciplinary proceedings were initiated against the respondent *vide* Order dated 22.07.2013 under the Punjab Employees Efficiency, Discipline and Accountability Act, 2006, on the charges of (a) willful absence from duty for the period from 04.06.2013 to 23.06.2013; (b) proceeding abroad to go to the Kingdom of Saudi Arabia (KSA) during the period of absence without obtaining ex-Pakistan leave and without the permission of the competent authority; and (c) producing a bogus medical certificate from a private medical practitioner to claim medical leave for the period of absence, even though during that period he was

in KSA. After conducting a regular enquiry, the respondent was awarded the major penalty of reduction to a lower post, of Assistant District Attorney (BS-17), from his original post of Deputy District Attorney (BS-18), for four years by the competent authority *vide* Order dated 21.10.2013. The respondent preferred a departmental appeal which was rejected on 30.05.2016, hence he filed a Service Appeal before the Tribunal which was allowed by means of the impugned Order.

3. The learned Additional Advocate General, Punjab, argued that the learned Tribunal failed to appreciate that during regular inquiry, not only the charges of willful absence were proved but the medical certificates produced by the respondent were also proved to be fabricated and ante-dated. It was further contended that the respondent returned from KSA after 23 days of willful absence and fraudulently maneuvered the false and ante-dated medical certificates. He further argued that the learned Tribunal also ignored the entries in the passport of the respondent which were self-explanatory. It was further averred that the competent authority already took a lenient view and, instead of removal from service, only imposed the penalty of reduction to a lower post from BS-17 to BS-18 for four years to maintain the discipline and decorum of the department.

4. The learned counsel for the respondent argued that a civil servant can be punished only on the basis of absence from duty if it is proved to be willful, but the absence of the respondent was neither willful nor intentional; it was due to circumstances beyond his control. He further argued that as far as the allegation of submitting a fake medical certificate is concerned, the same was cropped up due to a variation between the date of departure of the respondent and the starting date of his rest, as shown in the medical certificate. It was further contended that even if the respondent remained absent from duty without a prior sanction of leave, the penalty imposed on him was harsh. He further argued that the respondent had left Pakistan in extreme difficult circumstances, hence he does not deserve any punishment on account of his alleged misconduct.

5. Heard the arguments. The relevant excerpt of the Order rendered by the learned Tribunal is quite significant which, for the ease of convenience, is reproduced as under:-

"5. Without touching merits of the case, it is surfaced that through the impugned order the appellant has been allowed extraordinary leave without pay for the period he remained absent from duty and in this way the punishing authority regularized his absence. This being so very ground has vanished on which appellant was proceeded against. As his absence had already been considered sanctioned/approved as and leave extraordinary without pay, the penalty awarded to the appellant is nullity in the eye of law as laid down in the reported judgment 2006 SCMR 434. In view of this position the instant appeal is accepted and the impugned orders are set aside". **[Emphasis supplied]**

6. The catchphrase "on the merits" denotes a *lis* decided on the strength of applicable law and the evidence presented before the Courts or Tribunals by the parties in support of their advanced pleas. No doubt, a lawsuit is bound to collapse when there is no rational basis on which the claim could succeed. A case deems to have been decided on the merits when the decision or order is founded on fundamental issues, with due consideration of the defense, and the probability and preponderance of evidence, both oral and documentary. On the contrary, the impugned order of the learned Tribunal depicts that the appeal of the respondent was allowed on the notion that he was granted extraordinary leave without pay for the period he remained absent from duty, and in this way, the punishing authority regularized his absence. Therefore, the penalty awarded to him was a nullity in the eyes of the law, which finding seems to be incongruous.

7. We are at loss to understand how the learned Tribunal decided the matter without touching upon the merits of the case and why it did not, after considering the merits, decide the appeal, which was its prime duty under the law. A meticulous and assiduous reading of the Service Tribunal Acts, both Federal and Provincial, unequivocally shows that the Service Tribunal is empowered to confirm, set aside, vary, or modify the order appealed against, and for the purpose of deciding any appeal, it is also deemed to be a Civil Court with the same powers as those vested in the Code of Civil Procedure, 1908. However, the award of appropriate punishment under the law is primarily the function of the concerned administrative authority and the role of the Tribunal/Court is secondary. In tandem, the law also authorizes the Tribunal to decide on the proportionality *vis-à-vis* the quantum of punishment awarded to the civil servants by the departmental authority. In appropriate cases, the Tribunal may substitute or modify the quantum of punishment to ensure it is commensurate and rational, being mindful of the allegations of misconduct and the gravity of the charges. However, it must follow the limitations and

restrictions of the law in its exercise of discretion, in a manner which may not offend the spirit of law. While taking into consideration the philosophy of punishment and concept of retribution, it should also keep in mind that the purpose of deterrent punishment is not only to balance the gravity of the wrong done, but also to maintain discipline and decorum in the establishment, and at times, to serve as a preventive measure or example for others in the interest of societal reformation. Therefore, while converting a major penalty into minor penalty, the Tribunal is obligated to exercise its jurisdiction with proper application of mind. [Ref: Judgments authored by one of us in the cases of Postmaster General Balochistan versus Amanat Ali and others (2024 SCMR 1484 = 2024 PLC (C.S) 1051 = 2024 SCP 271), Postmaster General Sindh Province, Karachi versus Syed Farhan (2022 SCMR 1154), Government of Khyber Pakhtunkhwa versus Nargis Jamal (2022 SCMR 2114) and Divisional Superintendent, Postal Services, D.G. Khan Vs. Nadeem Raza (2023 SCMR 803)].

8. The factual controversy was required to be resolved by the Tribunal, being an ultimate judicial fact-finding forum which has been constituted to exercise exclusive jurisdiction in respect of matters relating to the terms and conditions of service of civil servants and for the matters connected therewith or ancillary thereto. Being the first fact-finding forum as an appellate Tribunal, constituted under Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973, it is the onerous duty and responsibility of all Service Tribunals in the country to thoughtfully examine the original and appellate orders passed by the departmental authorities imposing fines or punishments upon civil servants, with proper application of mind. It is a well-settled exposition of law that an appeal is a continuation of the original proceedings, and in the appellate stage, the entire matter is reopened to determine whether the order or judgment appealed against is in accordance with the law or contains inherent defects that need to be rectified within the appellate jurisdiction of the Tribunal to attain finality. Therefore, in all fairness, while exercising the appellate jurisdiction under the provisions of the Service Tribunal Acts, the first and foremost duty is thoroughly examine all facts of the case and diligently address all factual and legal pleas raised by the parties, and then decide whether the proceedings for misconduct, initiated through a show cause notice and statement of allegations, were duly proved or not. In case the penalty has been imposed as a result of a regular inquiry, then it is also necessary to

examine the inquiry proceedings and inquiry report, along with the recommendations forwarded by the inquiry officer/inquiry committee to the competent authority for further action in accordance with the law. In service appeals challenging minor or major penalties imposed upon the civil servants, the core issue is to evaluate the gravity of charges and the proof of the guilt of the delinquent during the inquiry, but without advert to the inquiry proceedings and report, it would not be possible for the learned Tribunal to reach a just and proper conclusion.

9. The minutiae of the case reflects that the respondent was allowed casual leaves from 31.05.2013 to 03.06.2013, but he failed to resume his job and remained absent from duty without any prior intimation up to 23.06.2013 and proceeded to go to KSA without permission of the competent authority and without ex-Pakistan leave. Later on, he submitted bogus medical certificates from a private medical practitioner, for grant of medical leave, to cover up the willful absence for the period in which he was actually in KSA. A proper regular departmental enquiry was conducted and the respondent was awarded the aforesaid major penalty. If at all, the competent authority treated the period of absence as extraordinary leave without pay, it does not mean in any way that the respondent was exonerated from the charges. If it is, then each and every willful absence case may be treated in a similar manner and the period of absence may be converted into extraordinary leave without any punishment. In the semblance of this course of action, the competent authority would be debarred never-endingly from imposing any punishment on account of willful absence and is ought to give a clean slate, despite the charge of a serious misconduct, with a simple conversion of a period of absence into extraordinary leave without pay, which will in fact make the entire disciplinary action redundant, which is not the spirit of law. Seeing as the learned Tribunal passed the order without touching upon the merits of the case, it could not advert to the inquiry proceedings and inquiry report with recommendations where the charges were proved against the respondent beyond any shadow of doubt and he was rightly punished by the competent authority, which punishment does not deserve any variation.

10. While allowing the appeal of the respondent, the learned Tribunal relied upon the judgment rendered by a two-member bench of this Court in the case of Lahore Development Authority Vs. Muhammad Nadeem

Kachloo (2006 SCMR 434). In fact, in this case, the delinquent was awarded the major penalty of dismissal from service under the provisions of the Punjab Removal from Service (Special Powers) Ordinance, 2000, but at the same time, his absence period was ordered to be treated as leave without pay, which was quite confounding. The question before this Court was that when a person has been ordered to be dismissed from service, could at all the benefits, such as that of salary, be given to him? Whereas, another crucial aspect in this case was that the employee was making applications time and again, accompanied by medical certificates, for the purpose of extending the period of his leave, which were not responded to by the department, either in approval or rejection. The set of circumstances in the quoted judgment were altogether different; hence, we find it distinguishable. It is reiterated that in the instant case, as a matter of fact, the competent authority, after complying with due process of law, awarded the punishment to the respondent. If the act of willful absence or leave without sanction or travelling without the approval of ex-Pakistan leave is treated lightly, it will become a hobby for willful absentees rather than an act of misconduct. Thus, merely treating the period of absence without pay in cases where punishments are imposed by the competent authority other than dismissal/removal from service neither exonerate the respondent from the charge of misconduct nor the act of misconduct is vanished on this count alone. Indeed, such benefit was accorded in a lenient view to avoid breakup in the length of service only which does not amount to exoneration from the period of absence.

11. In the wake of the above discussion, this Civil Petition is converted into an appeal and allowed. Consequently, the impugned Order dated 18.06.2019 is set aside and the service appeal filed by the respondent before the learned Tribunal is dismissed.

Judge

Judge

Judge

Islamabad
23rd October, 2024
Khalid
Approved for reporting.

