

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE JAMAL KHAN MANDOKHAIL
MR. JUSTICE SHAHID WAHEED

Civil Petition No.1276 of 2020

(Against the order dated 11.10.2019
passed by the Punjab Service Tribunal
in Appeal No.4309 of 2012)

Sanaullah Sani

... Petitioner

VERSUS

Secretary Education Schools
etc.

... Respondents

For the Petitioner : Ch. Afrasiab Khan, ASC and
Mr. M. Mehmood Chaudhry, ASC
along with petitioner (in person)

For the Respondents : Mr. Sanaullah Zahid, Adl. A.G., Pb.
Muhammad Imran, Law Officer,
School Education Department, Govt.
of Punjab

Date of Hearing : 17.08.2023

JUDGMENT

Shahid Waheed, J. This petition is by a retired government teacher seeking leave to appeal against the judgment, dated 11th of October, 2019, of the Punjab Service Tribunal upholding the punishment imposed on him on the culmination of the disciplinary proceedings.

2. The facts of this case consists of two parts. The first part deals with the facts which form the background to the second part, while the second part is about the facts which constitute the cause and led to the matter being brought first to the Tribunal and then to this Court. So, let us state the background facts first. In January, 2007, the petitioner was posted as Deputy District Education Officer

(M-EE), Wahga Town, Lahore Cantt. At that time, three PTC teachers were absent from duty. Two of them, namely, Farooq Ahmed and Muhammad Siddique, filed separate writ petitions in the High Court stating that the petitioner was neither allowing them to join the duty nor deciding their applications for release of salary. The High Court disposed of these writ petitions with a direction to the petitioner to decide on their applications. In the meantime, the third absentee teacher, Muhammad Khalid, presented his application for joining duty directly to the petitioner. On these applications, the petitioner gave separate notices to these teachers to show their cause, as to why they were absent from duty. After taking their replies and perusing the record, the petitioner allowed these teachers to join duty by his written orders, issued in July & August, 2010. However, he did not grant them any back benefits. They joined the duty, commenced working and also started drawing their salary. Here ends the first part.

3. Now, we briefly state the facts of the second part. On 30th of June, 2011, when the petitioner was nearing retirement, a person named Allah Rakha, filed a complaint that the petitioner had allowed the said teachers to join duty on fake appointment letters by accepting a huge bribe. Based on this complaint, the Secretary of the School Education Department, Government of Punjab, on 07th of February, 2012, ordered proceedings against the petitioner under Section 3 of the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 (the PEEDA) on charges of inefficiency, misconduct and corruption and appointed Haji Munawar Hussain, Principal, Government Comprehensive High School, Gujranwala, as the Inquiry Officer. The statement of allegations forming the above charges was not set out well, and hence, it is reproduced here to avoid any ambiguity and doubt. It reads that *"he while posted as Deputy District Education Officer (BS-18) Wahga Town, Lahore Cantt joined/inducted the following PTC Teachers without checking the office record/genuineness of*

the appointment orders and caused a heavy loss to Govt. Exchequer". Reference in this allegation was to (i) Farooq Ahmad, PTC Teacher, Govt. Primary School, Sahankay, Lahore Cantt; (ii) Muhammad Khalid, PTC Teacher, Govt. Primary School, Rakh Hardit Singh, Lahore Cantt, and (iii) Muhammad Siddique PTC Teacher, Govt. Primary School, Thehpura, Lahore Cantt, about whom we have explained in the background facts. The Inquiry Officer recorded the statement of two prosecution witnesses, the complainant Allah Rakha, the said three PTC teachers and the petitioner. On 11th of June, 2012, the Inquiry Officer submitted his report with twofold recommendations. One is to impose a penalty of withholding of 50% pension on the petitioner and to recover from him an amount of Rs.1,090,373/- on account of the salary paid to the above-stated teachers. Two, action should also be taken against these teachers under the PEEDA. Pursuant to these recommendations, the Secretary of the School Education Department, on 20th of June, 2012, issued a show cause notice to the petitioner as to why the penalty proposed by the Inquiry Officer should not be imposed upon him. The petitioner submitted his reply, but it did not find favour with the Secretary of the School Education Department and he vide his order dated 12th of July, 2012, imposed a penalty of withholding of 20% of pension with recovery of Rs.963,467/. The petitioner then took his departmental appeal to the Chief Secretary. His appeal did not succeed and was dismissed by the order dated 11th of October, 2012. Cheesed off, he then approached the Punjab Service Tribunal but failed to bring home his innocence, as his appeal was dismissed on 11th of October, 2019. So, this petition is before us.

4. Impeaching the judgment of the Tribunal, it is contended on behalf of the petitioner that the inquiry report and consequent penalty imposed on him are illegal for they are based on a vague show cause notice that conflated three distinct charges, which are inefficiency, misconduct and corruption, and it does not disclose any details of the incidents forming these charges, that it was not taken into

consideration by any of the *fora* that the teachers who were allowed to join duty were already on the strength of the department and had been drawing their salary before the petitioner was posted as Deputy Director Education Officer. Their appointment was neither declared bogus by any competent authority nor any disciplinary proceedings were undertaken against them; they were paid salary only for the actual work done by them, and the whole proceedings smack of bad intention to deprive him of his good reputation and pension.

5. The quintessence of these arguments is that since the entire disciplinary proceedings were founded on an illegal show cause notice, the resulting punishment cannot be justified. This makes it profoundly important for us first to examine how the law contemplates the show cause notice and what are the essentials prescribed for it.

6. A conjoint reading of the various provisions of the PEEDA suggests that a show cause notice is not an accusation made or information given in abstract but an accusation made against an employee in respect of an act committed or omitted, cognizable thereunder. As such, the law intends that a show cause notice must conform to at least seven essential elements, and these include:

- (a) it should be in writing and should be worded appropriately;
- (b) it should clearly state the nature of the charge(s), date, and place of the commission or omission of acts, along with apportionment of responsibility;
- (c) it should clearly quote the clause of the PEEDA under which the delinquent is liable to be punished;
- (d) it should also indicate the proposed penalty in case the charge is proved;
- (e) it should specify the time and date within which the employee should submit his

explanation in writing. It is also preferable to add in the show cause notice that if no written explanation is received from the accused within the prescribed date, the enquiry will be conducted ex-parte;

(f) it should be issued under the signature of the competent authority and

(g) it should contain the time, date and place of the inquiry and the name of the inquiry officer.

7. It must be mentioned here that strict compliance of the above conditions is vital so that the principle of natural justice is not violated. It is thus emphasised that the charges made in the show cause notice should not be vague. All the acts of commission or omission constituting the charge, and also forming the ground for proceeding against the employee, should be clearly specified because otherwise, it will be difficult for an employee, even by projecting his imagination, to discover all the facts and circumstances that may be in the contemplation of the competent authority to be established against him, and thus, it will not only frustrate the requirement of giving him a reasonable opportunity to put up a defence but also amount to a violation of his fundamental right to a fair trial.¹

8. In light of the above position of law, we now seek to ascertain whether the alleged acts of omission or commission could have led to the petitioner's punishment. The first charge levelled against the petitioner was corruption, but the alleged acts of omission and commission stated in the notice/order lacked material particular to that charge. It did not mention that the petitioner had accepted a huge bribe from anyone. Therefore, the Inquiry Officer could

¹ State of Andhra Pradesh and others v. Sree Rama Rao (AIR 1963 SC 1723),
Surath Chandra Chakravarty v. The State of West Bengal (AIR 1971 SC 752),
Sawai Singh v. State of Rajasthan [(1986) 3 SCC 454]
And Anil Gilurker v. Bilaspur Raipur Kshetria Gramin Bank and Ors [(2011) 14 SCC 379]

not have read this charge in the show cause notice/order, and it appears that this is why the Inquiry Officer did not mention this charge in his report. What is more, the Inquiry Officer, in his report has not referred to any statement of witness which says the taking of bribe by the petitioner. This charge, therefore, fails on two counts: one, assuming the alleged acts of omission and commission are correct, no case of corruption is made out from there, and two, no evidence has been brought on record to prove the same. So, this charge could not have led to any punishment.²

9. We now turn to the other charges. The petitioner was charged with misconduct and inefficiency. The foundation of these charges mentioned in the show cause notice/order was that he, while posted as Deputy District Education Officer, Wahga Town, Lahore Cantt, allowed three absentee teachers to join duty without checking the office records and genuineness of their appointment orders and thus, caused a heavy loss to the government exchequer. There is no denying that the petitioner, in his reply, stated that while granting permission to the teachers to join duty, he had checked the record and found that they had 4 to 19 years of service to their credit and had been previously paid salaries from the exchequer. Their appointments had never been declared bogus by any authority, nor any disciplinary proceedings were undertaken against them. Upon noticing this fact, we asked learned Additional Advocate General, Punjab, whether these assertions were correct. He submitted that the appointment of the teachers was fake, and that is why they were absent from duty. As such, the petitioner was required to ascertain the authenticity of their appointment orders. We wonder how the petitioner could have known that absence of the teachers from duty was due to the fact that their appointment was bogus, particularly when nothing to this effect was available in the office record. It is worth

² Mian Abdul Qadeer v. Government of Pakistan and others (2005 SCMR 1560)
And Muhammad Alamzeb Khan v. Registrar, Peshawar High Court, Peshawar and another (2008 SCMR 1406)

noting that neither the show cause notice/order nor the inquiry report says that notwithstanding the written complaint regarding fake appointment order, the petitioner had allowed the teachers to join duty. Had it been so, the position would have been otherwise, and we would have accepted the argument of the learned Additional Advocate General, Punjab. A perusal of the inquiry report indicates that the Inquiry Officer, instead of proving the charges of misconduct and inefficiency, had put in his energy to establish that the appointment orders of the teachers were not genuine. This fact alone is sufficient to conclude that when the petitioner allowed the teachers to join duty, no complaint or adverse material against them was available. In such a situation, the petitioner was not expected to have checked the genuineness of the appointment orders of the teachers while allowing them to resume duty. So, again, the charges were vague, which vitiates the inquiry proceedings and the resultant punishment.³

10. Nevertheless, we are conscious of the fact that acts performed and orders made by public authorities deserve due regard by Courts, and every possible explanation for their validity should be explored and the whole field of powers in pursuance of which the public authorities act or perform their functions examined and only then if it is found that the act done, order made or proceedings undertaken is without lawful authority should the Courts declare them to be of no legal effect.⁴ We, therefore, asked the learned Additional Advocate General, Punjab, to refer us to any law or departmental instructions making it mandatory for an officer to check the genuineness of the appointment orders of all those who are absent from

³ Lal Muhammad and another v. Government of Sind (1980 SCMR 850)

⁴ (1) The Chairman, East Pakistan Railway Board, Chitta Gong; and (2) District Traffic Superintendent, Pakistan Eastern Railway, Pahartali, Chitta Gong v. Abdul Majid Sardar, Ticket Collector, Pakistan Eastern Railway, Laksam (PLD 1966 SC 725),
And Lahore Improvement Trust, Lahore through its Chairman v. The Custodian, Evacuee Property, West Pakistan, Lahore and 4 others & University of the Punjab, Lahore v. Custodian, Evacuee Property, West Pakistan, Lahore and 4 others (PLD 1971 SC 811)

duty, without leave or any other cause, while allowing them to resume duty. After consulting the departmental representative, he failed to do so. The irresistible outcome of the above is that the charges leveled against the petitioner were laconic, and the Inquiry Officer has taken into consideration the non-existing material, and findings of all facts recorded by him cannot be sustained in the eye of law. And so, the punishment awarded also loses the backing of the law.⁵

11. Apart from discussing the merits of this case, we also wish to observe the quality of the Tribunal's judgment. It is to be noted that dictates of law are that a judicial order must be speaking order manifesting by itself that the Court or Tribunal has made an effort to resolve the questions involved for their proper adjudication. A diligent attempt may lead to ultimate result, but if the final order does not bear an imprint of that effort and, on the contrary, discloses arbitrariness of thought and action, the feeling with painful result that justice has neither been done nor seems to have been done is inescapable. Here, the Tribunal's judgment does not exhibit a judicious treatment of the case and the determination of the dispute. It was the duty of the Tribunal to deal with all the issues we pointed out above because appeal was a valuable right of the employee. Unfortunately, the Tribunal did not make a bid for appraisal of any of the grounds advanced before it by the present petitioner. This is a dereliction of duty and a complete failure to exercise jurisdiction. The judgment of the Tribunal, therefore, cannot be held valid.⁶

⁵ Allah Bakhsh, Foodgrain Supervisor (Retd.) v. Director Food, Punjab, Lahore and others (2006 SCMR 403)

⁶ Gouranga Mohan Sikdar v. The Controller of Import and Export and 2 others (PLD 1970 SC 158)

Mollah Ejahar Ali v. Government of East Pakistan and others (PLD 1970 SC 173)

Ms. Clare Benedicta Conville and others v. Mst. Sabahat Idrees and others (2009 SCMR 851)

Muhammad Ameer and others v. Mst. Fajjan and others (2012 CLC 1663)

12. Thus, for the foregoing reasons, this petition is converted into an appeal and allowed. As a result, the judgment of the Punjab Service Tribunal dated 11th of October, 2019, is set aside, the punishment order is quashed, and the department/respondents are directed to restore the full pension of the petitioner, to refund the amount of Rs.963,467/- along with the amount so far recovered from the pension of the petitioner, within two months positively from the date of receipt of a certified copy of this judgment.

Judge

Judge

Islamabad, the
17.08.2023
"Approved for reporting".
Sarfraz Ahmad & Agha M. Furqan, LC