

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, CJ
Mr. Justice Mazhar Alam Khan Miankhel
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi

AFR

Civil Appeal No.561 of 2020

(Against the judgment dated 6.8.2019,
passed by the Federal Service Tribunal,
Islamabad (Karachi Bench), in Appeal
No.78(K)CS/2013)

Federation of Pakistan through General Manager / Operations
Pakistan Railways, Headquarters Office, Lahore and others

...Appellants

Versus

Shah Mohammad

...Respondent

For the Appellants: Mr. M. D. Shahzad Feroz, ASC

For the respondent: Mr. Muhammad Shoaib Shaheen, ASC
Syed Rifaqat Hussain Shah, AOR

Date of hearing: 01.06.2021

JUDGMENT

Gulzar Ahmed, C.J.- The respondent was employed in Pakistan Railways as Permanent Way Inspector (BPS-16) in Sukkur Division when an accident took place on 26.09.2002, where 24-Down Quetta Express with eight Coaches derailed at Bridge No.130/B (between Peerak Dingra Stations). An FIR of such incident was lodged and criminal case proceeded before the criminal Court. The appellants, in the meantime, conducted disciplinary proceedings on such an accident and thereafter, imposed on the respondent penalty of reversion from the post of Permanent Way Inspector (BPS-16) to that of Assistant Way Inspector (BPS-11) and also transferred him to Multan Division as

a measure of punishment. It seems that the respondent retired on 08.10.2005 on attaining the age of superannuation. After his retirement, he started getting pension from the appellants up-to October, 2006 when suddenly the payment of pension was stopped to the respondent and he was informed that the pension had been stopped for the reason that he had been convicted by the criminal Court in the case of accident, which had taken place on 26.09.2002. The respondent filed service appeal before the Federal Service Tribunal, Islamabad (Karachi Bench) (**"the Tribunal"**). By the impugned judgment dated 06.08.2019, the Tribunal allowed the appeal of the respondent and directed the appellants to pay pension and also all arrears of pension to the respondent.

2. The submission of the learned ASC for the appellants is that in terms of Rule 2307 of General Conditions Governing Pension (C.S.R. 351), the respondent was not entitled to payment of pension. On the other hand, learned ASC for the respondent has supported the impugned judgment and also contended that no notice of stopping the payment of pension was given to the respondent by the appellants.

3. We have considered the submissions of the leaned counsel for the parties and have also gone through the record of the case.

4. Rule 2307 of General Conditions Governing Pension (C.S.R. 351), quoted in the impugned judgment, for the sake of convenience, is reproduced below:

"2307 [C.S.R. 351.]. Right to Withhold or Withdraw Pension. – Future good conduct is an

implied condition of every grant of pension. The Governor General reserves to himself the right of withholding or withdrawing a pension or any part of it, if the pensioner be convicted of serious crime or be guilty of grave misconduct.

The decision of the Governor General on any question of withholding or withdrawing the whole or any part of a pension under this Rule shall be final and conclusive.”

5. It is by now well settled law that a Government servant, who retires from service qualifying for retirement benefits, pension being a material part of it, does not get the same as a bounty of the State but as a right acquired after putting in satisfactory service. The grant of pension cannot be refused arbitrarily and if refused, it has to be in accordance with the relevant rules.

6. Reading the Rule as quoted above shows that the rules itself provide that in order to get the pension the pensioner has to maintain future good conduct as an implied condition for grant of pension. The two instances have been given in the said rule, which give power to the Government to withhold or withdraw a pension or any part of it i.e. where the pensioner is convicted of a serious crime or be guilty of a grave misconduct.

7. So far the present case is concerned, the matter regarding grave misconduct has already been adverted to by the Railways Authorities and on this account he has been imposed penalty of reversion from the post of Permanent Way Inspector (BPS-16) to Assistant Way Inspector (BPS-11) vide order dated

26.04.2003, and also transferred him to Multan Division. It seems that in the criminal case, initiated by the Pakistan Railways on the accident of 26.09.2002, the Additional Sessions Judge-I, Sibi, passed its judgment dated 30.11.2006, by which the respondent was convicted and sentenced under Section 302(c) Pakistan Penal Code, 1860 (PPC) to suffer fourteen years' R.I. and fine of Rs.100,000/-, in default whereof to undergo further S.I. of one year. The respondent was also convicted and sentenced under Section 324 Q&D to suffer seven years' R.I. and fine of Rs.50,000/-, in default whereof to undergo further S.I. of six months. The respondent was also convicted and sentenced under Section 427 PPC to suffer two years' R.I. and fine of Rs.10,000/-, in default whereof to undergo further S.I. of two months. The respondent was also convicted and sentenced under Section 101 of the Railways Act, 1890, to suffer four years' R.I. and fine of Rs.10,000/-, in default whereof to undergo further S.I. for two months. However, the benefit of Section 382-B Cr.P.C. was also extended to him. The respondent filed Criminal Appeal No.(s)81/2006 in the High Court of Balochistan, Sibi Bench at Quetta (**the High Court**). This criminal appeal of the respondent came to be decided vide judgment dated 03.02.2010. The High Court in its judgment converted the conviction under Section 302(c) PPC to that of Section 319 PPC (*Qatl-e-Khata*) and awarded sentence of five years' R.I. as *Taazir* and fine of Rs.100,000/-, in default whereof to further undergo S.I. of one year was maintained. The High Court maintained the conviction and sentence under Section 101 of the Railway Act, 1890. The High

Court found that no offence under Sections 337 and 324 PPC was made out but maintained the conviction and sentence under Section 427 PPC. This very judgment of the High Court was challenged by the respondent in Criminal Appeal No.14-Q of 2010 before this Court, which was dismissed vide judgment dated 10.04.2018 as having become infructuous, for the reason that the respondent had served out his sentence.

8. In the accident, in which the respondent was involved, as many as 08 persons lost their lives and there was colossal loss to the railway property. As a result of respondent's conviction by the trial Court vide judgment dated 30.11.2006, from October, 2006, the payment of pension to the respondent was stopped. The question that needs to be considered in the case in hand is whether in terms of Rule 2307 (C.S.R.351) *ibid*, the appellants-department was justified to stop payment of pension to the respondent. The Tribunal in its impugned judgment dated 06.08.2019 has interpreted the said Rule that it will be applicable to an employee, who is retired from service and commit an offence during the period of his retirement. In coming to such conclusion, the Tribunal has given weight to the words "future good conduct" used in the said Rule, meaning that an employee has to maintain good conduct after his retirement. The Tribunal has further found that in respect of the same incident the respondent has already been imposed penalty of reversion to lower rank and the criminal case on the same incident having been decided after retirement of the respondent, Rule 2307 (C.S.R-351) *ibid* will have no application. The Tribunal has also found that no formal order of

stoppage of pension is available on the record. In this view of the matter, the Tribunal allowed the service appeal of the respondent and directed the appellants to pay pension to the respondent along with arrears from the date it was stopped.

9. This Court in the case of The Government of N.W.F.P., Through the Secretary to the Government of N.W.F.P., Communications and Works Department, Peshawar vs. Mohammad Said Khan and another (PLD 1973 Supreme Court 514), while considering Rule 1.8 of Pakistan Civil Service Pension Rules, 1963, which to some extent is similar to Rule 2307 (C.S.R-351) *ibid* observed as follows: -

“On the other hand under clause (a) maintenance of good conduct throughout his life is an inflexible obligation of a pensioner so that if he is found guilty of a serious crime or gross misconduct even after his retirement he is liable to suffer a diminution in the amount of his pension, no matter how long it happens after his retirement.”

This Court thus, has laid down as a law that for being entitled to pension, a civil servant has to have good conduct throughout his life. This means that the civil servant has to have and maintain good conduct before entering service, during the period of service and even after retiring from service, for being paid pension. This Rule is an exception to the general rule which entitles the civil servant to a pension as of right after having rendered satisfactory qualifying service.

10. The question which arises is as to what is the standard of good conduct, which a civil servant is required to have for being entitled to payment of pension. The term “good conduct” is not defined in the rules, thus, it seems to have been left to the

judgment of the authority, who is entitled to take decision in the matter. However, the said Rule itself has provided two specific instances where the authority reserves to itself the right of withholding or withdrawing a pension or any part of it, i.e., if the pensioner be convicted of a serious crime or be guilty of grave misconduct. Here we are dealing with the question of conviction of serious crime and not of guilty of grave misconduct because for the charge of misconduct, respondent has already been imposed penalty while he was in service of the appellants.

11. Learned ASC for the respondent has contended that respondent, once having been imposed penalty in departmental proceedings, could not be imposed further penalty of stoppage of pension on the same charge. This argument of the learned ASC for the respondent would not detain us for long for the simple reason that in respect of a charge, which also constitutes a criminal offence under the law of the land, the civil servant can legally be proceeded departmentally as well as lodging of a criminal case. The consequences of both departmental proceedings and criminal case are distinct. In the departmental proceedings, if a civil servant is found guilty, he suffers penalty as provided by the rules of service, while in criminal case, if adjudged guilty suffers conviction and sentence of imprisonment and fine as provided by law. Both types of proceedings, the law allows to be conducted simultaneously, reference in this regard is made to the cases of Muhammad Ashraf Khan vs. Director Food, Punjab, Lahore (2004 SCMR 1472), Riasat Ali vs. Principal, Government Technical Training Centre, Sahiwal

[2004 PLC(CS) 413], Shahid Masood Malik vs. Habib Bank Ltd (2008 SCMR 1151), Rab Nawaz Hingoro vs. Government of Sindh [2008 PLC(CS) 229].

12. Now, it is apparent from the rule quoted above that it provides for an additional consequence on a civil servant being convicted of a serious crime that of withholding or withdrawing of pension or any part of it. Additional consequence is mentioned for the reason that in a disciplinary proceeding with regard to the same incident civil servant is imposed penalty provided by the rules of service and if the incident also constitutes an offence under the law of the land, the civil servant is prosecuted and in case the charge is proved against him, he is convicted and sentenced and imposed fine, as the case may be. Beside these two inflictions, the rule has provided a third infliction that of withholding or withdrawing of pension or any part thereof where the civil servant is convicted of a serious crime. It is not shown by any law that this third infliction is contrary to law rather we find that it is a deliberate rule so as to obtain good conduct of a pensioner, which is an independent ground on which pension or any part of it can be withheld or withdrawn.

13. We now come to deal with the question whether respondent was convicted of a serious crime. The learned ASC for the respondent did not argue before us that the respondent was not convicted of a serious crime. We have noted that the term "serious crime" is not defined in the rules nor any statute was shown giving specific meaning to this term. In the absence of the

definition in the rules itself or in the statute, the Court has to rely upon its ordinary dictionary meaning. In Black's Law Dictionary (Ninth Edition) the term "serious crime" is defined as follow:

Serious crime. 1. see serious offense under OFFENSE (1) 2. See FELONY.

Serious offense. An offense not classified as a petty offense and usu. carrying at least a six-month sentence also termed serious crime. Cf. petty offense.

Felony, n. 1. A serious crime usu. Punishable by imprisonment for more than one year or by death. Examples include burglary, arson, rape, and murder.— Also termed major crime; serious crime.

In Advanced Law Lexicon (2005) the term "serious crime" is defined as follow:

Serious crime. See under 'FELONY'.

Felony: Crime of any kind, - legally graver than misdemeanour. Acts declaring any act or omission to be felony attach to the act or omission all the incidents for the time being attached by common law or other past or future statutes to felonies.

A serious criminal offense for which the penalty is usually more than a year's confinement in a state or federal prison.

A serious crime usually punishable by imprisonment for more than one year or by death. Examples include murder, rape, arson, and burglary. At common law, a felony was an offense for which conviction involved the forfeiture of the defedant's lands or goods, or both, to the Crown Treason was traditionally included in the term.

14. These definitions of the term "serious crime" have a common feature of being related to and measured by the amount of sentence imposed that of more than six months. In the present case the criminal trial Court convicted the respondent under section 302(c) PPC and sentenced him to suffer R.I. of fourteen (14) years besides other convictions and sentences. In appeal, the High

Court modified the conviction and sentence from under section 302(c) PPC to that of section 319 PPC and sentenced the respondent to suffer R.I. of 5 years besides other convictions and sentences. In the Supreme Court, the respondent's criminal appeal was dismissed as infructuous. Thus, the convictions and sentences awarded by the High Court were maintained. The respondent having been convicted and awarded sentence of R.I. of 5 years is thus more than sentence of six months and falls within the ambit of the term "serious crime" as provided in the above quoted Rule 2307 (C.S.R-351) and the respondent's pension was rightly stopped by the authority of appellants.

15. The learned ASC for the respondent has contended that no notice of stoppage of pension was given to the respondent by the appellants. We may note that the rule, as quoted above, does not require giving of any notice but simply states that if the pensioner be convicted of a serious crime his pension can be withheld or withdrawn. We are, however, conscious of a universal principle and as a general rule that notice is required before any adverse action is taken against any person. But we note that the respondent himself knows about his conviction and sentence awarded to him in the criminal case and the very stoppage of pension was a notice to him that his pension has been stopped on account of his conviction and sentence in a criminal case, to which fact there is no dispute. The respondent has challenged the stoppage of pension to him and the appellants have taken a plea that such stoppage of payment of pension to the respondent is on account of his conviction and sentence in the criminal case. In our

view, in such facts and circumstances of the matter, there was no violation of the universal principle of providing opportunity of hearing and no prejudice was caused to the respondent.

16. We also find that the Tribunal was not justified in giving meaning to Rule 2307 (C.S.R-351) that it applies only to good conduct of a pensioner after his retirement and to the crime committed by a pensioner after his retirement. This reading of the Tribunal was not only flawed but also run contrary to the interpretation already given by this Court to a similar rule which is cited above.

17. We are, therefore, of the opinion that the impugned judgment of the Tribunal suffers from inherent defect and illegality and thus, is set a side. The appeal is allowed with no order as to costs.

Sd/- = H C J
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Sd/- = J

Islamabad, the
1st June, 2021
Approved for reporting
Mahtab / *