

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE MUNIB AKHTAR

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CIVIL APPEAL NO. 441 OF 2021

(Against the judgment dated 22.09.2020
passed by the Peshawar High Court,
Abbottabad Bench in Writ Petition No. 830-
A/2019)

President National Bank of Pakistan and others

...Appellant(s)

Versus

Waqas Ahmed Khan

...Respondent(s)

For the Appellant(s): Rai Mohammad Nawaz Kharal, ASC
Rafaqat Hussain Shah, AOR

For the Respondent(s): Nemo

Date of Hearing: 16.01.2023

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Through this appeal by leave of the Court, the appellants have called in question the *vires* of the judgment dated 22.09.2020 passed by the learned Peshawar High Court, Abbottabad Bench whereby the Writ Petition filed by the respondent was allowed and the appellants were directed to allow the respondent to join his duty in pursuance of appointment order dated 24.06.2015.

2. Briefly stated the facts of the matter are that father of the respondent was Manager in the appellant National Bank of Pakistan and died while he was in service of the Bank. The respondent filed Writ Petition No. 52-A/2013 before the Peshawar High Court for his appointment in the National Bank under son-quota. The said Writ Petition was allowed vide judgment dated 10.12.2013 and the appellants were directed to appoint the

respondent on regular basis on any post commensurate to his qualification. This judgment was also upheld by this Court vide order dated 23.02.2015 passed in Civil Petition No. 235/2014. Thereafter, the appellant Bank issued appointment letter dated 24.06.2015 and directed the respondent to join the duty as Cashier within a period of 30 days. However, on coming to know that the respondent was involved in a criminal case registered vide FIR No. 1172/2013 dated 23.11.2013 under Section 302 PPC at Police Station Hawalian, District Abbottabad for committing murder of his wife, he was not allowed to join the duty. Later on, the respondent was acquitted by the learned Trial Court vide judgment dated 02.05.2019 while exercising the powers under Section 265-K Cr.P.C. After his acquittal, he filed Writ Petition No. 830-A/2019 before the Peshawar High Court with a prayer that the appellants may be directed to take charge from him as per appointment order dated 24.06.2015. The learned High Court vide impugned order dated 22.09.2020 accepted the Writ Petition filed by the respondent and directed the appellants to allow the respondent to join his duty in pursuance of the appointment order dated 24.06.2015. Being aggrieved by the impugned order, the appellants filed Civil Petition No. 3527/2020 before this Court wherein leave was granted on 28.04.2021 and the present appeal has arisen thereafter.

3. At the very outset, learned counsel for the appellants contended that at the time when the respondent was offered job in the appellant Bank, he was involved in a criminal case but he concealed this fact. Contends that the respondent had not approached the learned High Court with clean hands and had misstated the facts, therefore, he could not have been given the relief sought for. Contends that appointment of the respondent under the son quota is a policy matter, as such, the writ petition was not maintainable before the High Court especially keeping in view the criminal background of the respondent. Lastly contends that acquittal under Section 265-K Cr.P.C. is not an acquittal *stricto sensu*, as such, the impugned judgment is based on wrong presumption of law, therefore, the same may be set at naught.

4. Although notice has been served on the respondent and he is represented by a counsel yet neither the respondent nor his counsel is in attendance. In this view of the matter, we are inclined to proceed with the matter on merits.

5. We have heard learned counsel for the appellants and have perused the record with his able assistance.

There is no denial to this fact that doctrine of legitimate expectation connotes that a person may have a reasonable expectation of being treated in a certain way by administrative authorities owing to some uniform practice or an explicit promise made by the concerned authority. The legitimate expectation ascends in consequence of a promise, assurance, practice or policy made, adopted or announced by or on behalf of government of a public authority. When such a legitimate expectation is obliterated, it affords locus standi to challenge the administrative action before the court of law. However, it is for the Court to decide as to whether the expectation is legitimate or not. Said doctrine is applied as a tool to watch over the action of administrative authorities and in essence imposes on all authorities to act fair and square in all matters encompassing legitimate expectation. Reliance is placed on Uzma Manzoor Vs. Vice Chancellor Khushal Khan Khattak University, Karak (2022 SCMR 694). In the present case, the respondent in the earlier round of litigation had approached the learned High Court with a view to appoint him under the son quota. However, he concealed the factum of his being involved in a criminal case. No doubt, the Constitutional courts being guardians of the Constitution have the power to judicially review the administrative/executive actions and the conduct of the public authorities but the same shall be on the touchstone of fairness, reasonableness and proportionality. We are not oblivious of the fact that although the respondent was involved in a criminal case of murder of his wife and was acquitted subsequently pursuant to proceedings carried out under Section 265-K Cr.P.C. However, it is settled law that even if the allegations leveled in the FIR are admitted to be false, even then without recording of evidence, it cannot be said that there was no probability of

conviction of the accused. In order to ascertain the genuineness of the allegations, the Trial Court ought to have allowed the prosecution to lead evidence. Even otherwise, this Court in Model Customs Collectorate, islamabd Vs. Aamir Mumtaz Qureshi (2022 SCMR 1861) and State Vs. Raja Abdul Rehman (2005 SCMR 1544) has categorically held that in appellate or revisional proceedings, the same sanctity cannot be accorded to acquittal at intermediately stage such as under Section 249-A or 265-K Cr.P.C. as available for those recorded and based on full-fledged trial after recording of evidence. The respondent was offered the job of cashier in the Bank but when the Bank came to know that he has a criminal background, the Bank did not allow him to join the duty. The post of cashier is considered to be very important in a Bank. It is the cashier who collects and disburses cash. It is for this reason that every Bank wants their cashier to be of such a person, that no one can point a finger on his conduct. We are, therefore, of the view that while not allowing the respondent to join the duty, the Bank was well within its domain and acted naturally. The learned High Court ought to have taken into consideration the above fact but it failed to do so.

6. For what has been discussed above, this appeal is allowed, the impugned judgment of the learned Peshawar High Court is set aside. The above are the detailed reasons of our short order of even date.

JUDGE

JUDGE

JUDGE

Islamabad, the
16th of January, 2023
Approved For Reporting
Khurram