

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR.JUSTICE SARDAR TARIQ MASOOD
MR.JUSTICE MUHAMMAD ALI MAZHAR

CIVIL APPEAL No. 17-Q OF 2021

(Against the judgment dated 07.04.2021
Balochistan Service Tribunal, Quetta, in
S.A. No.542/2019)

Inspector General of Police, Quetta and another ...Appellants

VERSUS

Fida Muhammad and others ...Respondents

For the Appellants: Mr. Ayaz Khan Swati, Addl.AG.
Balochistan

For Respondent No.2, 3, 5, 7-10, 12, 13. Mr. M.Rauf Ata, ASC

For Respondent Nos.1, 4, 10 In person

Date of Hearing: 18.04.2022

JUDGMENT

MUHAMMAD ALI MAZHAR, J. This Civil Appeal with leave of this Court is brought to challenge the judgment dated 07.04.2021 passed by the learned Balochistan Service Tribunal, Quetta in S.A. No. 542 of 2019, whereby the Service Appeal filed by the respondents (employees) was allowed and they were reinstated in service.

2. The transitory facts of the case are as under:-

On 28.12.2018, advertisement was published in the Newspapers to invite applications for different vacant posts in the Balochistan Police Sibi Range. The respondents applied for the different posts respectively and after completion of all requisite formalities including the scrutiny of documents they were selected and appointment letters were issued to them on 22.05.2019. However, vide consolidated order of cancellation of appointment dated 21.06.2019, the appointment letters were

withdrawn. The respondents filed departmental appeal which remain undecided therefore they preferred the Service Appeal before the learned Service Tribunal, Balochistan. The learned Service Tribunal allowed the appeal, set aside the cancellation order of the appointments and reinstated the respondents.

3. The learned Additional Advocate General, Balochistan argued that the learned Service Tribunal has committed serious error while allowing the Service Appeal of the respondents and failed to consider that the advertisement was made for the entire Sibi range which consists of five districts i.e. District Sibi, District Ziarat, District Harnai, District Kohlu and District Dera Bugti, whereas the appointments were made from District Sibi and Harnai which was in violation of Rule 9 (6) of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules 2009 ("**the 2009 Rules**"), therefore, the appointment orders were rightly withdrawn. It was further argued that the respondents had no vested right to appointment in violation of Rules.

4. The learned counsel for the respondents argued that, after appointment, the respondents were performing their duties to the satisfaction of the competent authority and there was no complaint against them, but all of a sudden their appointment letters were cancelled through an omnibus order without disclosing any reason, providing any opportunity of hearing or issuing any show cause notice. The Departmental Appeal remained undecided within the statutory period, hence the respondents approached the learned Service Tribunal for redressal of their grievances. It was further averred that the action of the petitioners was in violation of the principle of natural justice whereby the services of low paid, poor employees belonging to downtrodden areas were terminated.

5. Leave to appeal was granted vide order dated 18.11.2021 in the following terms:-

"Learned Additional Advocate General, Balochistan contends that the respondents who were all local residents of District Sibi could not have been appointed to the local post of District Ziarat and their appointment on such account in terms of Rule 9 (6) of Balochistan Civil Servants (Appointment, Promotion and Transfer), Rules, 2009, being illegal, were validly cancelled and withdrawn, and the Tribunal by the impugned judgment was not justified in granting reinstatement to the respondents to the same

post in District Ziarat, as the appointment in District Ziarat could only be made to that of local based in District Ziarat and not that of District Sibi or any other District.

2. Contention raised by the learned Additional Advocate General needs consideration. Leave to appeal is granted to consider, *inter alia*, the same..."

6. Heard the arguments. It is reflected from the available record that the respondents applied for the posts in response to the advertisement published in the newspapers for recruitment on vacant posts. The applications were submitted by the respondents individually for appointment in BPS-1 against the vacant posts of Painter, Barber, Gardener, Welder, Washer man, Cook and Sweeper. Some appointment orders were issued collectively, including some other candidates who are not party to the present *lis* but, in a nutshell, the appointment letters are conspicuously transpiring that the present respondents are the indigenous dwellers of District Sibi and the appointments in BPS-1 were not made only for Sibi, but some persons that were inhabitants of other local areas, such as District Harnai, Dera Bugti and Ziarat, were also appointed. Corresponding to these undeniable and indisputable facts, the contention of the learned Additional Advocate General that all appointments were made for Sibi only is misconceived and ill-thought-out. It is also quite perceptible that all the appointment letters were issued by the Deputy Inspector General of Police, Sibi Range with the approval of the Inspector General of Police, Balochistan, Quetta but on consideration of merits of each successful candidate duly recommended by the Departmental Selection Committee, constituted by the Competent Authority vide Notification No.57451-99/13(103)/Admn, dated 28.12.2018. As a result thereof, all the respondents were appointed on different posts in BPS-1 as admissible under the 2009 Rules against the existing vacancies. However, an omnibus order dated 21.6.2019 was issued by the DIG Police, Sibi Range for cancellation of appointments without disclosing any reason for cancellation or withdrawal and without issuing any show cause notice or providing any opportunity of audience to the respondents.

7. The learned counsel for the petitioners predominantly relied on Sub-Rule (6) of Rule 9 of the 2009 Rules. In fact, this whole Rule is

concomitant to initial appointment and its guiding principle. For the ease of convenience, the aforesaid Rule is reproduced as under:-

9. (1) Initial appointment to the post in basic pay scales 16 and above or equivalent shall be made if the post;

(a) fall within the purview of the Commission, on the basis of examination or test to be conducted by the Commission; and

(b) do not fall within the purview of the Commission, in the manner as may be determined by Government.

(2) Initial appointments to the posts in basic pay scales 1 to 15 and equivalent shall be made on the recommendations of the Departmental Selection Committee, after these vacancies have been advertised in leading newspapers.

(3) A candidate for initial appointment to a post must possess the educational qualification (s) and experience and be within the age limit as laid down for the post.

(4) A candidate for appointment shall be the citizen of Pakistan and a domicile/local of the Province of Balochistan.

(5) Posts in basic pay scale 3 to 15 in offices which serve only a particular Region or District shall be filled by appointment of persons domiciled in the Region or District concerned.

(6) Posts in basic pay scale 1 and 2 shall ordinarily be filled on local basis. [Emphasis applied]

8. The nucleus and essence of this Rule as long as associated with this case elucidates in clear terms that initial appointment to the posts in Basic Pay Scales 1 to 15 and their equivalent shall be made on the recommendations of the Departmental Selection Committee after these vacancies have been advertised in leading newspapers; candidates for appointment shall be citizens of Pakistan having a domicile of the province of Balochistan with the rider that the posts in Basic Pay Scales 1 and 2 shall ordinarily be filled on local basis. To be frank, we have no hesitation to hold that neither the above Rule is supporting the petitioners' plea nor it is opposed or antagonistic to the case of respondents. Admittedly, the respondents are local inhabitants of Sibi for which also applications were invited in the newspapers. The respondents were appointed on 22.05.2019 after fulfillment and contentment of required codal formalities including the recommendation of Departmental Selection Committee. The leave to appeal was obtained under the guise and pretext of Sub-Rule (6) of Rule 9 of the 2009 Rules with ill-conceived and misconstrued insights. Undoubtedly and irrefutably, the aforesaid

Sub-Rule only enshrines that the posts in Basic Pay Scales 1 and 2 shall ordinarily be filled on local basis and under the same understanding of this condition, not only the applications of the respondents were entertained but after proper scrutiny and verification of their antecedents, the Departmental Selection Committee (constituted for this purpose) recommended their appointments. At first sight, it is quite obvious without ado that the respondents were local inhabitants of district Sibi and not foreigners or aliens to the province of Balochistan. The appointment letters do not reflect that all the appointments were made for Sibi only, but names of various districts are mentioned where also the equal opportunity was afforded. No convincing or persuasive *raison d'être* was brought forward to evenhandedly assume the ground of debarring the respondents from selection in view of the rigors of the aforesaid Rule which does not seem to have been violated in any way while appointing the respondents on the recommendation of the Departmental Selection Committee.

9. Quite the reverse, the petitioners have gravely violated the principle of natural justice and due process insofar as, without providing any opportunity of hearing or issuing show cause notice, they terminated the services of the respondents by dint of an omnibus order in an abrupt and unprofessional manner. The doctrine of natural justice is destined to safeguard individuals and whenever the civil rights, human rights, Constitutional rights and other guaranteed rights under any law are found to be at stake, it is the religious duty of the Court to act promptly to shield and protect such fundamental rights of every citizen of this country. The principle of natural justice and fair-mindedness is grounded in the philosophy of affording a right of audience before any detrimental action is taken in tandem with its ensuing constituent, that the foundation of any adjudication or order of a quasi-judicial authority, statutory body or any departmental authority regulated under some law must be rational and impartial and the decision maker has an adequate amount of decision making independence and the reasons of the decision arrived at should be amply well-defined, just, right and understandable, therefore it is incumbent that all judicial, quasi-

judicial and administrative authorities should carry out their powers with a judicious and evenhanded approach to ensure justice according to tenor of law and without any violation of the principle of natural justice. In our Constitution, the right to a fair trial is a fundamental right. On inclusion of this fundamental right, we ought to explore and review the laws and allied Rules and Regulations to figure out that this indispensable right should not be deprived of. In the case of Tariq Aziz-ud-Din, Human Rights Cases Nos. 8340, 9504-G, 13936-G, 13635-P & 14306-G to 14309-G of 2009 (2011 PLC (C.S.)1130), while referring to the case of Delhi Transport Corporation v. D.T.C. Mazdoor Congress AIR 1991 SC 101 and Mansukhlal Vithaldas Chauhan v. State of Gujarat 1997(7) SCC 622, this Court held that the object of good governance cannot be achieved by exercising discretionary powers unreasonably or arbitrarily and without application of mind. Such objective can be achieved by following rules of justness, fairness and openness in consonance with command of Constitution enshrined in different Articles including Arts. 4 and 25 of the Constitution. Good governance is largely dependent upon upright, honest and strong bureaucracy particularly in written Constitution wherein important role of implementation has been assigned to bureaucracy.

10. In the case of Asim Khan and others Vs. Zahir Shah and others (2007 SCMR 1451), the respondents secured their appointments as PTC teachers after recommendations of Departmental Selection Committee but later on the appointment letters were withdrawn by the authorities on the ground that respondents did not have valid domicile certificates of category. High Court restored the appointment letters of respondents. This Court held that respondents had secured vested right which right could not be taken or withdrawn without fulfilling the requirement of principles of natural justice. Principles of natural justice must be read in each and every statute unless and until the same were excluded from the wording of the statute itself. In the case of Muhammad Akhtar Shirani and others Vs. Punjab Text Book Board and others (2004 SCMR 1077), the Court held that beneficiary cannot be blamed alone because primarily the authority who had actually mis-

exercised his powers for the reasons known to it is bound to be held responsible for the same, instead of penalizing the petty employees like Chowkidar, Naib-Qasid, junior clerks etc. who have to earn livelihood to support their families and if after having served for a long period they are removed. In this regard at a number of occasions, it has been held by this Court that instead of removing the employees from service, action should have been taken against the authority who had mis-exercised its powers. The Court also referred to the judgment rendered in the case of *Managing Director, SSGC Ltd. v. Ghulam Abbas* PLD 2003 SC 724 wherein it was held that assuming that appointments of some of the respondents were contrary to Rules/Regulations then the authority who was in the helm of the affairs may have declined to honour the directions of political personalities. However, for any flaw or defect in the appointment as far as respondents are concerned, they cannot be blamed. Whereas in the case of Muhammad Shoaib and 2 others Vs. Government of N.W.F.P. through the Collector, D.I. Khan and others (2005 SCMR 85), it was held that the department was bound to issue notice to the appellants to show cause as to why their services be not terminated accordingly. Had such notice been issued, the appellants might have come out with the defence that the appointments were not illegal and that the illegality, if at all, had been committed by the department itself for which action they could not be penalized. It was further held that the principle of natural justice and audi alteram partem, has grossly been violated. While in the case of Mst. Basharat Jehan Vs. Director-General, Federal Government Education, FGEI (C/Q) Rawalpindi and others (2015 SCMR 1418), it was held that once a person is appointed after fulfilling all the codal formalities, appointment letter is issued, it was held that a vested right is created and appointment letter could not be withdrawn. It was further held that once a right is accrued to the appellant by appointment letters issued after complying with all the codal formalities could not be taken away on mere assumption and or supposition and or whims and fancy of any executive functionary. Such right once vests, cannot be destroyed or withdrawn as legal bar would come into play under the well doctrine of locus poenitentiae well recognized and entrenched in our jurisprudence. While in the

case of Director, Social Welfare, N.W.F.P., Peshawar Vs. Sadullah Khan (1996 SCMR 1350), it was held that the petitioners themselves appointed him (respondent) on temporary basis in violation of the rules for reasons best known to them. Now they cannot be allowed to take benefit of their lapses in order to terminate the services of the respondent merely because they have themselves committed irregularity in violating the procedure governing the appointment. In the peculiar circumstances of the case, the learned Tribunal is not shown to have committed any illegality or irregularity in re-instating the respondent.

11. The doctrine of vested right upholds and preserves that once a right is coined in one locale, its existence should be recognized everywhere and claims based on vested rights are enforceable under the law for its protection. A vested right by and large is a right that is unqualifiedly secured and does not rest on any particular event or set of circumstances. In fact, it is a right independent of any contingency or eventuality which may arise from a contract, statute or by operation of law. The doctrine of *locus poenitentiae* sheds light on the power of receding till a decisive step is taken but it is not a principle of law that an order once passed becomes irrevocable and a past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of such an illegal order but in this case, nothing was articulated to allege that the respondents by hook and crook managed their appointments or committed any misrepresentation or fraud or their appointments were made on political consideration or motivation or they were not eligible or not local residents of the district advertised for inviting applications for job. On the contrary, their cases were properly considered and after burdensome exercise, their names were recommended by the Departmental Selection Committee, hence the appointment orders could not be withdrawn or rescinded once it had taken legal effect and created certain rights in favour of the respondents.

12. The learned Additional Advocate General failed to convince us that if the appointments were made on the recommendations of Departmental Selection Committee then how the respondents can be

held responsible or accountable. Neither any action was shown to have been taken against any member of the Departmental Selection Committee, nor against the person who signed and issued the appointment letters on approval of the competent authority. As a matter of fact, some strenuous action should have been taken against such persons first who allegedly violated the rules rather than accusing or blaming the low paid poor employees of downtrodden areas who were appointed after due process in BPS-1 for their livelihood and to support their families. It is really a sorry state of affairs and plight that no action was taken against the top brass who was engaged in the recruitment process but the poor respondents were made the scapegoats. We have already held that the respondents were appointed after fulfilling codal formalities which created vested rights in their favour that could not have been withdrawn or cancelled in a perfunctory manner on mere presupposition and or conjecture which is clearly hit by the doctrine of *locus poenitentiae* that is well acknowledged and embedded in our judicial system.

13. In view of the above discussion, we do not find any illegality or perversity in the impugned judgment of the learned Service Tribunal. The appeal is accordingly dismissed.

Judge

Judge

Islamabad the
18th April, 2022
Khalid
Approved for reporting