

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, C.J.
Mr. Justice Ijaz ul Ahsan
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi

CIVIL APPEAL NO. 985 OF 2020

(Against the judgment dated
21.11.2019 of the K.P.K. Service
Tribunal, Peshawar passed in
Appeal No.961/2018)

Secretary Elementary & Secondary Education Department,
Government of KPK, Peshawar and others

...Appellant(s)

VERSUS

Noor-ul-Amin

...Respondent(s)

For the appellant(s): Mr. Zahid Yousaf Qureshi, Additional
Advocate General, KPK

For the respondent(s): Mr. Khaled Rahman, ASC
Syed Rifaqat Hussain Shah, AOR

Date of hearing: 22.02.2021

...
ORDER

Gulzar Ahmed, C.J.- The respondent was employed as Primary School Teacher ("**PST**") in the Education Department of Khyber Pakhtunkhwa. He was granted ex-Pakistan leave from 02.12.2012 to 01.12.2014 vide order dated 31.12.2012. As the respondent did not report to duty on expiry of his ex-Pakistan leave, he was issued show-cause notice dated 24.10.2017. As the respondent did not report for duty despite issuance of notice in the newspaper, therefore, vide order dated 03.01.2018 the respondent was removed from service. The

respondent filed service appeal before the KPK Service Tribunal ("**Tribunal**") which by the impugned judgment was partly allowed by converting the major penalty of removal from service into a major penalty of compulsory retirement with effect from the date of his absence i.e. January, 2013 and the absence period was treated as unauthorized absence. While doing so, the Tribunal in paragraph No.6 dealt with the matter as follows:-

"6. Perusal of the record reveals that the appellant was serving in Education Department as Primary School Teacher. He was appointed as Primary School Teacher in the year 2000. The appellant was imposed major penalty of removal from service but the respondent-department has not conducted a proper regular inquiry as neither charge sheet statement of allegation was framed and served upon the appellant nor any regular inquiry was conducted against the appellant. Though the respondent-department has issued a show-cause notice but neither the respondent-department has dispensed the regular inquiry in the show-cause notice nor any reason for dispensing the regular inquiry has been mentioned in the show-cause notice. Moreover, the appellant was appointed as Primary School Teacher in the year 2000 and he was imposed major penalty of removal from service on the allegation of his absence from duty with effect from January 2013 meaning thereby, that he was having more than 10 years service in his credit with effect from his appointment till his absence, therefore, the impugned order of removal from service appear to be harsh. As such, we partially accept the appeal, set aside the impugned order and convert the major penalty of removal from service into a major penalty of compulsory retirement with effect from the date of his absence i.e. January 2013. The absence period is treated as unauthorized absence. Parties are left to bear their own costs. File be consigned to the record room."

It may be noted that the Tribunal has proceeded to modify the penalty on two counts; one that no regular inquiry was conducted and the other that the respondent has 10 years service. So far the question of regular inquiry is concerned, we note that the very fact of respondent remaining absent is not a disputed fact and thus there was no occasion for holding a regular inquiry in the matter. Reliance in this behalf can be placed upon the judgment reported as National Bank of Pakistan and another Vs. Zahoor Ahmed Mengal (2021 SCMR 144).

2. Being an employee for 10 years did not give any authority to the respondent on the basis of which he can stay away from job continuously for years altogether and thus in our view, such ground could not have been pressed for modifying the penalty imposed by the department upon the respondent giving premium to him on this misconduct. More so, when we look at the travelling history of the respondent given at page 15 of the paper-book it shows that almost twelve times the respondent has visited abroad and returned to Pakistan showing that he has some other activities and thus was not interested in continuing as PST. We, therefore, find that the modification of penalty by the Tribunal was not in accordance with law. In this behalf reliance can be placed upon the judgments reported as Commissioner Faisalabad Division, Faisalabad and another Vs. Allah Bakhsh (2020 SCMR 1418) and Government of the Punjab through Chief Secretary Vs.

Muhammad Arshad and 2 others (2020 SCMR 1962).

Resultantly, the impugned judgment to the extent of modification of penalty is set aside and the appeal to this extent is allowed.

Chief Justice

Judge

Judge

Islamabad, the
22nd of February, 2021
Approved for reporting
*Waqas Naseer/**