

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, CJ

Mr. Justice Muhammad Ali Mazhar

(AFR)

CIVIL APPEAL NO.835 OF 2021

[Against the judgment dated 14.11.2017, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Appeal No.34 of 2014]

**Government of Khyber Pakhtunkhwa
through Secretary Health, Civil
Secretariat, Peshawar and others.**

...Appellant(s)

Versus

Dr. Liaqat Ali and others.

...Respondent(s)

For the Appellant(s) : Mian Shafaqat Jan, Additional
Advocate General, KP
Zia Ullah, Deputy Secretary, Health
Department, KP

For Respondent No.1 : Sh. Riazul Haque, ASC

Date of Hearing : 06.01.2022

ORDER

GULZAR AHMED, CJ.- The Respondent No.1 (**the respondent**) was allowed deputation to Saudi Arabia in September, 2006 for two years, which was subsequently extended upto 20.09.2010. The respondent, on expiry of this extended period, again applied for further extension, which was refused. The respondent did not report for duty. Consequently, disciplinary proceedings were initiated against him and ultimately *vide* order dated 17.03.2012, he was removed from service. After filing of departmental appeal, the respondent filed service appeal before the Khyber Pakhtunkhwa Service Tribunal, Peshawar (**the Tribunal**). The Tribunal in the impugned judgment dated 14.11.2017, noted as a fact that

before imposition of penalty of removal from service on the respondent all codal formalities were observed, however, considering 24 years' service to his credit, the Tribunal found that the respondent is entitled to grant of retirement benefits and imposition of penalty of removal from service is harsh. The Tribunal proceeded to modify the penalty of removal from service into that of compulsory retirement.

2. Learned Additional Advocate General, KP contends that the respondent did not report for duty at all and the show cause notice issued to him was also not replied by him. The enquiry was conducted in which too he did not participate. The respondent by his own conduct has admitted of wilfully remaining absent from duty and continued his employment in Saudi Arabia despite the period allowed by the appellants stood terminated on 20.09.2010.

3. We note that imposition of penalty is in the domain of the competent authority, for that, the competent authority is fully empowered to impose such penalty upon its employee on finding him guilty of commission of misconduct as it considers appropriate and normally the Court will not interfere in such exercise of power by the competent authority. The conversion of penalty imposed by the competent authority will require a strong justifiable reason beyond what is stated by the Tribunal in the impugned judgment. The Court is not empowered to arbitrarily and whimsically find the penalty imposed by the competent authority to be harsh merely, on the ground that the respondent has put in 24 years' of service and is entitled to

grant of retirement benefits. The quantum of punishment has to be left with the competent authority and the Court cannot without any strong reason interfere with the same. The interference in the matter of punishment will be without jurisdiction when strong reasons are not assigned to support the same. The reference in this regard is made to the cases of Government of the Punjab through Chief Secretary vs. Muhammad Arshad and 2 others (2020 SCMR 1962), Deputy Postmaster General, Central Punjab Lahore and another vs. Habib Ahmed (2021 SCMR 584), Director General Federal Directorate and another vs. Tanveer Muhammad and another (2021 SCMR 345) and Divisional Superintendent, Postal Services, Faisalabad and others vs. Muhammad Zafarullah (2021 SCMR 400).

4. We, therefore, find that the Tribunal was not justified in reducing the penalty imposed by the competent authority of removal from service on the respondent into compulsory retirement, as the same is not supportable in law. Consequently, while allowing the appeal, the impugned judgment to the extent of modifying the penalty of removal from service into compulsory retirement is set aside and the penalty of removal from service is restored.

Bench-I

Islamabad

06.01.2022

NOT APPROVED FOR REPORTING
Rabbani/*