*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*

***CIVIL APPEAL NO. 130 OF 2021***
*(On appeal against the judgment dated 12.09.2019 passed by the Lahore High Court, Rawalpindi Bench in Writ Petition No. 2436/2019)*

*Tasawar Hussain*

*...Appellant*

***VERSUS***

*Deputy Commissioner District, Jhelum and others*

*...Respondent(s)*

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|---|---|
| *For the Appellant:* | *Khawaja Muhammad Arif, ASC*<br>*Syed Rifaqat Hussain Shah, AOR* |
| *For the Respondent:* | *Barrister Qasim Ali Chohan, Addl. P.G.*<br>*Mirza Muzafar Baig, Chief Officer, M.C. Pind dadan Khan* |
| *Date of Hearing:* | *08.06.2021* |

***...***

***JUDGMENT***

***SAYYED MAZAHAR ALI AKBAR NAQVI, J.-*** *Through this appeal by leave of the Court under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the appellant has called in question the judgment dated 12.09.2019 passed by the Lahore High Court, Rawalpindi Bench, whereby the writ petition filed by him was dismissed and the penalty of dismissal from service imposed upon him was maintained.*

*2. Briefly stated the facts of the case are that appellant was appointed as Chowkidar (BPS-1) in Municipal Committee, Pind Dadan Khan on 22.06.2002. He took leave from the department from 01.02.2013 to 31.01.2014. During his leave period, pursuant to registration of a criminal case bearing FIR No. 58 dated 10.02.2013 under Sections 302, 109, 34 PPC at Police Station Saddar Chakwal, the appellant absconded from the country and the leave period ended during his absconsion. However, he was arrested from abroad and ultimately, he was acquitted of the charge vide judgment dated*

*28.03.2017. The appellant had to join duty on 01.02.2014 but neither he applied for further leave nor informed his office. During his absence, inquiry proceedings were conducted against him. An Inquiry Officer was appointed on 10.03.2015 by the Tehsil Municipal Officer, Pind Dadan Khan and the appellant was given charge sheet vide letter dated 05.05.2015. The Inquiry Officer also issued publication of proclamation in this regard of the appellant in newspaper on 30.05.2015 and after inquiry proceedings vide order dated 17.06.2015 recommended to impose penalty of removal from service under Section 4(b)(v) of Punjab Employees Efficiency, Discipline and Accountability Act, 2006. On 20.08.2015, he was further issued a notice to appear before the Tehsil Municipal Officer for personal hearing but he neither appeared nor submitted his reply. He was given another opportunity for personal hearing for 26.11.2015 but again he did not appear nor replied. Ultimately, the competent authority vide order dated 22.10.2015 imposed major penalty of dismissal from service upon the appellant from the date of his absence i.e. 01.02.2014. After his acquittal, he filed departmental appeal on 13.04.2017 against his dismissal order but the same stood dismissed vide order dated 10.08.2017. He, thereafter, filed representation before the Deputy Commissioner Jhelum on 09.09.2017 but it also met the same fate vide order dated 21.05.2019. The appellant challenged these orders before the Lahore High Court, Rawalpindi Bench by filing Writ Petition No. 2436/2019, which has been dismissed vide impugned judgment. Hence, this appeal with leave of the court.*

*3. Learned counsel for the appellant inter alia contended that no inquiry officer has been appointed nor any inquiry has been conducted by the department; that the department did not follow the proper procedure as warranted under law; that after acquittal of the appellant from the criminal case, it was mandatory for the department to reinstate him in service; that the inquiry officer had recommended 'penalty of removal from service' but the competent authority without assigning any reason, awarded penalty of dismissal from service to the appellant, which is against the intent of law. In support of his arguments, learned counsel relied on the cases of Secretary Government of Punjab Vs. Ikramullah (2013 SCMR 572) and Shibli Farooqui Vs. Federation of Pakistan (2009 SCMR 281).*

*4. On the other hand, learned Additional Advocate General has supported the impugned order. He mainly contended that the appellant was awarded major penalty of dismissal from service due to willful absence of 23 months without any leave and being a public servant he was bound to take prior leave or inform the department but he did not respond in the manner as required, therefore, the major penalty of dismissal from service is rightly imposed upon him.*

*5. We have heard learned counsel for the appellant and the learned Law Officer at some length and have perused the available record.*

*6. It is an admitted fact that the appellant remained absent from duty for a long period of 23 months without taking leave. The only defence put by him is that as a false case was registered against him, therefore, due to fear of illegal persecution he absconded from the country. However, nothing had estopped him to at-least inform the department but he neither applied for leave nor informed his office. During his absence, the inquiry proceedings started and ultimately resulted in his dismissal from service on 22.10.2015. It is on record that the appellant was arrested through inter-pole on 25.08.2016 whereas he was granted bail on 01.10.2016 by the court of competent jurisdiction. Till that time, the inquiry proceedings had already completed. The Inquiry Officer also issued publication qua absence of the appellant in newspaper and after fulfilling all requirements of inquiry proceedings recommended that the penalty of removal from service under Section 4(b)(v) of Punjab Employees Efficiency, Discipline and Accountability Act, 2006 be imposed upon the appellant. The competent authority vide order dated 22.10.2015 imposed major penalty of dismissal from service upon the appellant from the date of his absence i.e. 01.02.2014 under Section 4(b)(vi) of the PEEDA Act, 2006. The anxiety of the learned counsel that the department has not followed the legal requirements before awarding the penalty is without any legal justification. All codal formalities were duly fulfilled. Otherwise, it is now well settled that where the absence from duty is admitted, there is no need to hold regular inquiry. This aspect has been taken care of by this Court in a recent judgment reported as National Bank of Pakistan Vs. Zahoor Ahmed (2021 SCMR 144) wherein while relying on an earlier judgment of this Court, it has been held as under:-*

> *"In the face of such absence from duty of the respondent, which being admitted, there was no need to hold a regular enquiry because this Court in the case of Federation of Pakistan through Secretary Ministry of Law and Justice Division, Islamabad v. Mamoon Ahmed Malik (2020 SCMR 1154), has already held that where the fact of absence from duty being admitted on the record, there was no need for holding of a regular enquiry for that there was no disputed fact involved to be enquired into."*
> ***(Underlined to lay emphasis)***

*7. The crux of the arguments advanced by the learned counsel for the appellant mainly relates to the fact that the Inquiry Officer had made recommendations contrary to the penalty inflicted by the competent authority. To carefully consider the aforesaid legal contention, a deeper analysis is required to adjudicate it according to the dictates of justice. In ordinary circumstances, it is now settled that the competent authority is not under obligation to act according to the recommendations made by the Inquiry Officer, rather it can inflict penalty as it deems appropriate according to the facts and circumstances surfaced on the record. There is no denial to this fact that the Inquiry Officer had made recommendation of removal from service in terms of Section 4(b)(v) of Punjab Employees Efficiency, Discipline and Accountability Act, 2006 but the competent authority has acted contrary to the recommendation while inflicting penalty of dismissal from service under Section 4(b)(vi) of the above-said PEEDA Act. There is no second cavil to this proposition that in both the eventualities, the employee has to relinquish the job but to ascertain the gravity of the punishment, it seems appropriate to know the consequence of both the penalties. The penalty of removal from service does not debar the employee to seek re-employment and it is not considered as a continuous stigma but the penalty of dismissal from service stigmatizes the employee on permanent basis, therefore, in all fairness the penalty of dismissal from service is placed at a higher pedestal as far as gravity of the punishment is concerned. It is established principle of law that in pursuance of the dictates of natural justice and fairness, while enhancing the penalty to a severe degree, assigning of the reasons seems to be more judicious, equitable and it further glorifies the judicial system. Hence, we are in agreement with the argument of learned counsel for the appellant that while enhancing the penalty, the competent authority is under legal obligation to assign judiciable reasoning. As far as the*

*judgments of this Court relied upon by the learned counsel for the appellant are concerned, they further fortify the view expressed by us, therefore, the present appeal to this extent is justified. As a consequence, the enhancement of the penalty of removal from service into dismissal from service is declared not sustainable in the eyes of law and coupled with appellant's length of service and the fact that he has already suffered hardship, we deem it appropriate to modify the penalty of dismissal from service into removal from service.*

*8. For what has been discussed above, this appeal is partly allowed and the impugned judgment is maintained with the modification of punishment as referred in the preceding paragraph.*

*CHIEF JUSTICE*

*JUDGE*

*JUDGE*

*Islamabad, the*
*8th of June, 2021*
*Approved For Reporting*
***K**hurram*