

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL APPEAL NO.1486 OF 2017

(Against the judgment dated 29.03.2016
passed by Peshawar High Court, Peshawar in
W.P.1457-P/2013)

AND C.M.A.498-P/2016 in C.A.1486/2017

(Stay application)

Provincial Selection Board, Govt. of Khyber
Pakhtunkhwa through its Chairman/Chief
Secretary, KPK

.....Appellant

VERSUS

Hidayat Ullah Khan Gandapur

.....Respondent

For the Appellant(s): Mian Shafaqat Jan, Addl. AG KPK

For the Respondent) In-person.

Date of Hearing: 01.10.2021

JUDGMENT

MUHAMMAD ALI MAZHAR, J. — This Civil Appeal is directed against the judgment passed by learned Peshawar High Court on 29.03.2016 in W.P.No.1457-P/2013 whereby the petition of respondent was allowed and the Provincial Selection Board, Government of Khyber Pakhtunkhwa was directed to issue pro-forma promotion order of the respondent in (BS-20) with effect from 10.09.2001.

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

The respondent/petitioner was serving as Superintending Engineer in Irrigation Department of Government of KPK, who was arrested by NAB but on account of plea bargain he was released. After initiating disciplinary proceedings by his department, he was dismissed from Service. Against the dismissal order, the respondent filed an appeal before the Service Tribunal, KPK which was allowed and he was reinstated in service vide judgment dated 29.12.2008 passed in Service Appeal No.1143/2001. The petitioner filed Civil Petition No.57-P & 61-P/2009 in this court which was subsequently withdrawn vide order dated 5.5.2009 for the reasons that the respondent had attained the age of superannuation and retired from service. Since the department was reluctant to implement the judgment of Service Tribunal, hence, the respondent had filed a Writ Petition No.889/2009 in the Peshawar High Court which was disposed of with direction to the petitioner to implement the judgment within one month. In addition, the respondent had also claimed pro-forma promotion but his request was refused by the

Provincial Selection Board due to plea bargain with NAB and admission of guilt by the respondent. Being aggrieved, the respondent filed another Writ Petition No.1457-P/2013 in the Peshawar High Court for seeking directions for his pro-forma promotion which was allowed vide impugned judgment.

3. Leave to appeal was granted on 09.11.2017, consistent with the observations allude to in the earlier order dated 16.10.2017 which is reproduced as under:-

“The Respondent avoided criminal prosecution in a Reference filed under the NAB Ordinance by entering into a plea bargain. Despite the fact that he stood convicted and not entitled to hold public office, he has been reinstated and given all back benefits. Now, he is agitating for antedate pro-forma promotion”.

4. The learned counsel for the appellant argued that the respondent was arrested by NAB. Soon after, he entered into a plea bargain and admitted his guilt of corruption. In the wake of retirement, he claimed pro-forma promotion. The case was placed before Provincial Selection Board but keeping in mind his gross misconduct and plea bargain with NAB, he was not found fit for pro-forma promotion. It was further contended that the respondent had no legal or moral right to claim pro-forma promotion as a vested right. The learned High Court failed to consider this important aspect and allowed the petition with the directions to the appellant to issue pro-forma promotion order in BS-20.

5. The respondent appeared in person. He could not deny the factum of his arrest by NAB as well as his act of plea bargain. However he vigorously relied on the case of Engineer Zahid Arif, Assistant Director Works & Services Department, who was also proceeded under the Removal from Service (Special Powers) Ordinance, 2000 for his involvement in NAB case and he also entered into a plea bargain. He was dismissed from service but reinstated by the Service Tribunal and later on, he was also granted pro-forma promotion. The respondent claimed his case at par and lodged the grievance that the benefit of pro-forma promotion should also be granted to him.

6. Heard the arguments. It is an admitted position that the respondent was arrested by NAB under Section 9 and 10 of National Accountability Ordinance 1999 for his involvement in corruption and corrupt practices. He confessed his guilt and himself put forward an application for plea bargain under Section

25 read with Section 15 of the National Accountability Ordinance 1999. He also surrendered Rs.17.5 Million which he gained on account of corruption or corrupt practices. The respondent was a civil servant and once he availed the benefits of plea bargain and his request was accepted by the court, he at one fell swoop would be deemed to have been convicted of the offence of corruption and corrupt practices.

7. The case in hand predominantly germane to the claim of respondent for pro-forma promotion after retirement which was allowed by the High Court without considering the impact and aftermath of plea bargain. The objectives of promulgating National Accountability Ordinance, 1999 is to provide for effective measures for detection, investigation, prosecution and speedy disposal of cases involving corruption, corrupt practices, misuse or abuse of power or authority, misappropriation of property, taking of kickbacks, commissions and for matters connected and ancillary or incidental thereto. As a special law, it is meant to eradicate and exterminate corruption and corrupt practices and grab hold of persons accused of such practices accountable to safeguard and protect public exchequer and ensuring its swift recovery. The niceties of Section 15 inter alia stipulates that if accused person is convicted under Section 9, he shall forthwith cease to hold public office if any held by him and further he shall be disqualified for a period of ten years to be reckoned from the date his release. The proviso attached to this section provides that any accused person who has availed the benefit of Sub-section (b) of Section 25 (plea bargain) shall also be deemed to have been convicted for offence under this ordinance and shall forthwith cease to hold public office.

8. In the case of State through Chairman NAB Vs. Hanif Hyder and another (2016 SCMR 2031), this court held that the option of Voluntary Return by a public servant and or a civil servant falls within the ambit of "misconduct" and needs to be departmentally proceeded against once he admits that he had earned money by corruption. After admitting this fact, he cannot hold any public office either in Federal or in Provincial Government or in any state owned organization. In the case of Muhammad Aslam, Ex-Deputy Director (Audit) District Govt. Lahore Vs. Auditor-General of

Pakistan, Islamabad. (2013 SCMR 1904)., the appellant entered into a plea bargain during pendency of the trial, which was accepted and NAB court ordered his release. The plea was taken by the appellant that no regular inquiry was conducted and he was removed from service after issuance of show cause notice. This court held that the appellant has not disputed the factum of entering into plea bargain, which was documented as a matter of record. In such like cases where the documents on the basis of which departmental proceedings have been initiated are not in dispute, the competent authority can dispense with the regular inquiry as no material is required to be collected for proceeding against the delinquent officer. Likewise, the appellant cannot take a plea that he was deprived of opportunity to rebut the charge when the documents on the basis of which departmental proceedings are initiated against the appellant have not been denied. Whereas in the Suo Motu Case No. 17/2016. (Unreported Order dated 24.10.2016), this court held that once a person accused of corruption or corrupt practices volunteers to offer to return the amount he has pocketed or gained through illegal means, prima facie, cannot hold any Government/Public Office, as the very act of his offering the voluntary return falls within the definition of "misconduct" under the service law and calls for initiation of disciplinary action against the accused persons.

9. We noted that while passing impugned judgment, the learned High Court only concentrated and focused on the case of Zahid Arif alone and held that the case of respondent and Engineer Zahid Arif were identical on all counts and since Zahid Arif was granted pro-forma promotion in the similar circumstances therefore the respondent should be treated alike. At the moment, the case of Zahid Arif is not before us but we are constrained to observe here that if any such special benefit or relaxation beyond the spheres or tenets of law was given to him that cannot change the position or status of such person other than the status already described and depicted in the NAB laws as a consequence of plea bargain. Any such benefit granted beyond the exactitudes or rigors of law cannot be treated as a good precedent in the case of respondent for implementation in the stricto sensu, rather it is an unlawful act of the authority which recommended the case of pro-forma promotion of a person who was booked by NAB in a corruption case and

released after plea bargain. We are sanguine that the catchphrase and expression "two wrongs don't make a right" symbolizes a philosophical benchmark in which a wrongdoing is made level or countered with another wrongdoing. In fact this maxim is used to reprimand or repudiate an unlawful deed as a reaction to another's misdemeanor. A wrong order or benefit cannot become a foundation for avowing equality or equal opportunity for enforcement of treatment alike rather such right should be founded on a legitimate and legally implementable right. A wrong order cannot be allowed to carry on which hardly confers any right to claim parity or equality. The respondent could not claim that if something wrong has been done in the case of Zahid Arif, therefore, the same direction should be given in his case also for committing another wrong which would not be setting a wrong to right but would be moving ahead and perpetuating another wrong which is disapproved and highly deprecated. No case of any sort of discrimination is made out. The concept of equal treatment could not be pressed into service by the respondent which presupposes and deduces the existence of right and remedy structured on legal foothold and not on wrong notion or whims. The learned High Court failed to analyze and discern that in the peculiar circumstances of the case, the respondent was not entitled to claim pro-forma promotion as a vested right, therefore, on the face of it, the direction issued by the High Court to grant this benefit was not based on correct exposition and elucidation of law and facts.

10. This Civil Appeal was allowed vide our short order dated 01.10.2021 whereby the impugned judgment of the Peshawar High Court was set aside. Above are the reasons in the aid of short order.

Chief Justice

Judge

Judge

Islamabad, the
01.10.2021
Approved for reporting
Khalid