

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.608 OF 2021

(Against the judgment dated 11.02.2020
passed by Punjab Service Tribunal, Lahore in
Appeal No.1975/2019)

Senior Superintendent of Police (Operations), etc.

...Appellants

VERSUS

Shahid Nazir

...Respondent

For the Appellant: Mr. Shaukat Rauf Siddiqui, Addl. AG
Punjab along with Ms. Nazia, DSP

For the Respondent In person.

Date of Hearing: 12.10.2021

JUDGMENT

MUHAMMAD ALI MAZHAR, J. — This Civil Appeal is directed against the judgment passed by the learned Punjab Service Tribunal, Lahore on 11.02.2019 in Service Appeal.No.1975/2019 whereby the appeal was partly allowed and major penalty of dismissal from service, inflicted upon the respondent was converted into forfeiture of two years of service.

2. The short and snappy facts of the case are that a show cause notice was issued to the respondent under the Punjab Police (E&D) Rules, 1975 that he failed to perform his duty efficiently and registration of some FIRs in different Police Stations exposes his involvement in criminal cases in which Reports under Section 173 Cr.P.C were also submitted in the concerned trial courts. The respondent submitted the reply which was not found satisfactory and he was awarded major punishment of dismissal from service. The respondent filed departmental appeal which was also rejected, thereafter, he preferred Service Appeal in the Punjab Service Tribunal which was partly allowed.

3. Leave to appeal was granted on 29.06.2021 in the following terms:-

"The learned Additional Advocate General, Punjab, contends that in the first place, the respondent was not acquitted on merits by the Criminal Court in as many as eight cases in which he was facing criminal trial and all such acquittal was made under Sections 249 and 249-A Cr.P.C. He contends that such decisions of the criminal cases were based upon the respondent's own conduct not allowing the complainants to appear in the Court and lead evidence in the cases. Further contends that where the Punjab Service Tribunal, Lahore has noted that the regular enquiry has not been conducted, it ought to have allowed holding of regular enquiry, for that, there are serious issues with the respondent for his retention in the police force.

2. The submissions made by the learned counsel for the petitioners require consideration. Leave to appeal is granted to consider, inter alia, the same. The appeal stage paper-books be prepared from the available record with liberty to the parties to file additional documents, if any, within a period of one month. As the matter relates to service, the Office is directed to fix the appeal expeditiously, preferably, after three months."

4. The learned counsel for the appellants argued that while passing the impugned judgment, the learned Punjab Services Tribunal, Lahore failed to consider that the criminal proceedings and departmental proceedings are quite different. The competent authority was not bound to wait for verdict in the criminal cases. It was further contended that the learned Tribunal ignored the material fact that the respondent being a member of a disciplined force was involved in criminal cases and various FIRs were registered against him in different Police Stations, hence, the respondent was rightly awarded major punishment of dismissal from service under the provisions of the Punjab Police (E&D) Rules, 1975. It was further averred that the competent authority had dispensed with the regular inquiry on the basis of documentary evidence. The acquittal order of the respondent was passed under Section 249-A Cr.P.C as he succeeded to win over the complainants and in some cases, proceedings were stopped against him under Section 249 Cr.P.C.

5. The respondent appeared in person and argued that he was acquitted by the trial court in all criminal cases. He further contended that he was dismissed from service without holding any

regular inquiry into the charges of misconduct. He fully supported the order of Services Tribunal whereby his major penalty of dismissal from service was converted into forfeiture of two years of service.

6. Heard the arguments. We are sanguine that the purpose and sagacity of initiating disciplinary proceedings by the employer is to find out and come to a decision whether the charges of misconduct leveled against the delinquent officer/employee are proved or not and in case his guilt is established, what action should be taken against him under the applicable Service laws, Rules and Regulations, which may include the imposition of minor or major penalties in accordance with the fine sense of judgment of the competent Authority/Management. In contrast, the perception and rationality to set into motion criminal prosecution is altogether different where the prosecution has to prove the guilt of an accused beyond any reasonable doubt. Both have distinct features and characteristics with regard to the standard of proof. It is well settled exposition of law that the prosecution in the criminal cases as well as the departmental inquiry on the same allegations can be conducted and continued concurrently at both venues without having any overriding or overlapping effect. The object of criminal trial is to inflict punishment of the offences committed by the accused while departmental enquiry is geared up or activated to inquire into the allegations of misconduct in order to keep up and maintain the discipline and decorum in the institution and efficiency of department to strengthen and preserve public confidence on any such institution. Even an acquittal by criminal court would not debar an employer from exercising disciplinary powers in accordance with applicable service Rules and Regulations. Keeping in view the sensitivity and importance, it is somewhat imperative and indispensable that if a departmental proceeding is triggered on the charges of misconduct, this should be concluded promptly and efficiently within a reasonable period of time rather than spoiling or obliterating the very purpose of such action or inquiry with delaying tactics or prolong it unnecessarily till the eve of retirement, then drop it to the benefit of delinquent employee which would annihilate the entire purpose of inquiry.

7. The main reason of reinstatement in service by the learned Tribunal is that the competent authority had dispensed with the departmental inquiry which was sine qua non. The record reflects that on 18.12.2018, the respondent was issued a show cause notice with the allegations that he failed to perform his duty efficiently and his previous record demonstrates that he was involved in criminal cases and FIRs were registered in different Police Stations. As a reference, numbers of eight, First Information Reports were also mentioned in the show cause notice. It was further asserted in the show cause notice that sufficient documentary evidence is on record to prove the allegations against him hence a regular inquiry was not necessary as the department has decided to take disciplinary action on the basis of show cause notice issued under Rule 6 (3) (b) of the Punjab Police (E&D) Rules, 1975 and ultimately, the respondent was dismissed from service on 17.01.2019.

8. There is no hard and fast rule that in each and every case after issuing show cause notice the regular inquiry should be conducted but if the department wants to dispense with the regular inquiry there must be some compelling and justifiable reasons assigned in writing. No doubt the respondent was booked in some FIRs lodged against him but he was not convicted by the court in any case when the show cause notice was issued to him in the year 2018, therefore, in order to reach just and proper conclusion, regular departmental inquiry should have been conducted by the police department as the case of respondent's misconduct could not be solitary based on mere documentary evidence but on the basis of the FIRs lodged where the prosecution had to prove the guilt of accused beyond any reasonable doubts. The presumption of innocence is a legal principle which enlightens that the accused of any crime is considered innocent until proven guilty. In this case, the inquiry was dispensed with on the pretext that FIRs were lodged which were not culminated in the conviction of the respondent before show cause, therefore, in the peculiar circumstances, neither inquiry could be dispensed with nor registration of FIRs could relax or absolve the obligation of holding regular inquiry to decide the allegations of misconduct against the

respondent. In the case of Basharat Ali Vs. Director, Excise and Taxation, Lahore and another (1997 SCMR 1543), this Court held that if the charge is founded on admitted documents/facts, no full-fledged inquiry is required but if the charge is based on disputed questions of fact, a civil servant cannot be denied a regular inquiry, as the same cannot be resolved without recording evidence and providing opportunity to the parties to cross-examine the witnesses. While in the case of Ghulam Muhammad Khan Vs. Prime Minister of Pakistan and others (1996 PLC (C.S.) 868), it was held that the question, as to whether the charge of a particular misconduct needs holding of a regular inquiry or not, will depend on the nature of the alleged misconduct. If the nature of the alleged misconduct is such on which a finding of fact cannot be recorded without examining the witnesses in support of the charge or charges, the regular inquiry could not be dispensed with. Similar view was expressed by this court in the case of Shakeel Ahmad Vs. I.G. Punjab Police, Lahore and others (2007 SCMR 192), that if disputed questions of fact are involved particularly in case of major penalty, a regular inquiry should be held so that an accused official is in a position to properly defend himself. Whereas this court in the case of Naseeb Khan Vs. Divisional Superintendent, Pakistan Railways, Lahore and another.(2008 SCMR 1369) again held that in case of imposing a major penalty, the principle of natural justice requires that a regular enquiry be conducted in the matter and opportunity of defence and personal hearing be provided to the civil servant proceeded against as held by this Court in the case of Pakistan International Airlines Corporation. Vs. Ms. Shaista Naheed (2004 SCMR 316) and Inspector-General of Police, Karachi and 2 others Vs. Shafqat Mehmood (2003 SCMR 2007). In the case of Fuad Asadullah Khan Vs. Federation of Pakistan (2009 SCMR 412), this court held that in case of awarding major penalty, a proper inquiry be conducted in accordance with law where full opportunity of defence be provided to delinquent officer. Recently, in the case of Chief Postmaster Faisalabad, GPO and another. Vs. Muhammad Fazal (2020 SCMR 1029), it was held by this Court that it is not a hard and fast rule that where there are serious allegations against an employee which are denied by him the department is under an

obligation to conduct a regular inquiry in all circumstances in case the departmental authorities come to the conclusion that there is sufficient documentary evidence available on record which is enough to establish the charge, it can, after recording reasons, which are of course justiciable, dispense with the inquiry in the interest of expeditious conclusion of departmental proceedings.

9. The conduct of the police department in this case is quite negligent and reckless rather it gives an impression that departmental inquiry was intentionally dispensed with to accord technical benefit to the respondent by perpetration of procedural lapses. The learned counsel for the appellants robustly argued that in all eight F.I.Rs, the respondent was not acquitted by the trial court on merits but in some cases he was acquitted under Section 249-A Cr.P.C whereas in some cases, proceedings were stopped under Section 249 Cr.P.C due to nonappearance of the complainants who were allegedly won over by the respondent. Under Section 249-A Cr.P.C, the Magistrate may acquit the accused at any stage of the case if, after hearing the prosecutors and the accused and for reasons to be recorded, he considers that the charge is groundless or there is no probability of the accused being convicted of any offence while under Section 249 Cr.P.C, the Magistrate may for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction and may release the accused. Before us not only the respondent is a police Constable but the appellants are also none other than Deputy Inspector General of Police (Operations) Lahore and Senior Superintendent of Police (Operation) Lahore but it is not only astonishing but beyond a reasonable comprehension that the appellants as member of disciplined force and the prosecution agency, all were so helpless and incapacitated that they could not take any action to challenge the acquittal of the respondent or stoppage of proceedings in any higher forum. Nothing said by the learned counsel for the appellants that any acquittal appeal or revision application was filed for undoing the wrong or any other application was moved in the trial courts for revival or resurrection of the proceedings stopped under Section 249 Cr.P.C or some other efforts were made

by the prosecution to search out or ensure the presence of the complainants and prosecution witnesses in the Trial Court to proof the guilt of the respondent on revival of stopped proceedings. The conduct of police department exposes grave slackness and laxity on their part either deliberately or otherwise where the matter of misconduct with criminal cases was taken so casually and leisurely instead of taking prompt action to challenge the acquittal of the respondent. If at this stage, the initiation of regular inquiry is ordered and matter is remanded then there would be an imminent likelihood and probability keeping in view the past track record and demeanor of the department in this case that as an eyewash an inquiry will be conducted but the possibility cannot be ruled out that even the punishment inflicted by the Services Tribunal will be vanished and clean chit will be given to the respondent with all back benefits. No useful or constructive purpose would be served from inquiry after lapse of considerable period of time, however, the appellants and prosecution may move proper application in the trial courts for revival of proceedings stopped under Section 249 Cr.P.C if they are sincere and serious to pursue pending criminal cases against the respondent.

10. This appeal was dismissed by our short order dated 12.10.2021. Above are the reasons.

Chief Justice

Judge

Judge

Islamabad, the
12.10.2021
Approved for reporting