

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Iftikhar Muhammad Chaudhry, CJ.
Mr. Justice Muhammad Nawaz Abbasi
Mr. Justice Saiyed Saeed Ashhad

CIVIL PETITION NO.1097-L OF 2004

(On appeal from the judgment dated 8.1.2004 passed by Federal
Service Tribunal, Lahore in Appeal No.89(L)(C.S)/2000)

Superintending Engineer GEPCO Sialkot

...Petitioner

Versus

Muhammad Yousaf

...Respondent

For the Petitioner:

In person

For the Respondents:

Mian Mehmood Hussain, ASC

Date of hearing:

23.11.2006

ORDER

Iftikhar Muhammad Chaudhry, CJ. - This petition has been filed for leave to appeal against the judgment dated 8.1.2004 passed by Federal Service Tribunal, Lahore in Appeal No.89(L)(C.S.)/2000.

2. Precisely stating the facts of the case are that respondent faced criminal proceedings for committing offence of culpable homicide amounting to murder. The trial Court saddled him with the penalty of death. Meanwhile, because of his arrest on 8th January, 1992 he was suspended. On the other hand in appeal learned Lahore High Court, Lahore set aside the conviction/sentence awarded to him by the trial Court and acquitted him from the charge of murder vide judgment dated 12th July, 1998. Accordingly, he was taken back on duty and the period of his suspension was treated as leave i.e. from 6th January, 1992 to 8th October, 1994. It is to be noted that from 9th October, 1994 to 12th September, 1998 nothing was paid to him. It is stated that the period from 8th January, 1992 to 8th October, 1994 on his acquittal was treated as leave on due basis instead of suspension as per order of the Authority dated 13th August, 1999. The period commencing from 9th October, 1994 to 12th September, 1998 was also treated as leave on due basis vide order

dated 16th July, 1999. Respondent being aggrieved from the order of the department approached the Service Tribunal for release of his salary for this period. Appeal was allowed by the impugned judgment. Relevant para therefrom is reproduced hereinbelow: -

“We have before us a judgment of the Apex Court. The citation is 1998 SCMR 1993. In this case the Civil Servant was also involved in a murder case. He was acquitted. The apex court was pleased to hold that in case of acquittal the Civil Servant should be considered to have committed no offence. He was declared entitled to grant of arrears of pay and allowances in respect of period he had remained under suspension on the basis of murder case against him. In the light of this authority we hold that the appellant is entitled to arrears of pay and allowances for the disputed period. In 2002 P.S.C.157 a similar view was expressed by the apex Court. The appellant was reinstated in service with back benefits for the period he had not been gainfully employed elsewhere. In the present case the appellant had not been gainfully employed elsewhere due to conviction in a murder case. He is, therefore, entitled to back benefits as held by the apex court. The most recent judgment of the apex court on the subject is reported as 2003 U.C.809 the appellant was acquitted in the criminal case and was held entitled to back benefits.”

3. Learned counsel for the petitioner contended that the respondent would only be entitled for the financial benefits for a period of six months during which he remained under suspension while for the remaining period he would be granted financial benefits but this period would be treated as leave on due basis.

4. On the other hand learned counsel for the respondent stated that as the respondent has been acquitted of the charge honourably, therefore, he is entitled for full benefits without treating the same period on the basis of leave due. He stated that exactly in such like situation this Court in the case **Dr. Muhammad Islam Vs. Government of N.W.F.P. through Secretary Food, Agriculture, Livestock and Cooperative Department, Peshawar and 2 others (1998 SCMR 1993)** has granted the relief to the employee who after acquittal from the murder charge claimed the benefit under FR 54(1). In this behalf it is to be noted that in identical circumstances in the case which has been relied upon by the Tribunal **Rashid Mahmood Vs. Additional Inspector**

General of Police and two others (2002 PSC 157) in which financial benefits were extended for the period during which a civil servant could not perform his duty on account of his involvement in the criminal case and as soon as he was acquitted of the charge he was held entitled for the full benefits considering him as if he has performed the duty. Learned counsel for the petitioner also contended that question for consideration would be as to whether the respondent was honourably acquitted because according to him the learned High Court while accepting his Criminal Appeal on 12th July, 1998 extended him benefit of doubt. In this behalf it may be noted that in the case of **Muhammad Iqbal Zaman, Vernacular Clerk, Marwat Canal Division, Bannu Vs. superintending Engineer, Southern Irrigation Circle, Bannu and 4 others (1999 SCMR 2870)** identical question came for consideration and this Court considered that acquittal of a civil servant, even if based on benefit of doubt was honourable. Applying same principle we are of the opinion that the respondent who statedly was acquitted by extending him benefit of doubt would be deemed to have been acquitted honourably. Therefore, under the circumstances we are of the opinion that the Service Tribunal rightly directed the petitioner to treat him on duty and give him all financial benefits during the period of his confinement in custody on account of his involvement in the murder case.

5. Thus for the forgoing reasons we see no force in the petition which is dismissed and leave declined.

Chief Justice

Judge

Judge

Islamabad, the

23rd November, 2006

Atif/*

APPROVED FOR REPORTING