

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No. D- 4752 of 2013

Ghulam Sarwar Thaheem

.....Petitioner

Vs.

Governor of Sindh/Controlling Authority of Sindh

Board Education through the

Principal Secretary to Governor Sindh & another.....Respondents

Dates of hearing: 13.09.2018, 22.11.2018 & 03.12.2018

M/s. Mohsin Qadir Shahwani & Abdul Karim Khan Abbasi,
advocates for the Petitioner.

Mr. Abdul Jalil Zubedi, Assistant Advocate General

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:- Through the instant Petition, the Petitioner has assailed the order dated 31.10.2000 passed by the Governor Sindh/Controlling Authority Board of Intermediate & Secondary Education in Sindh, whereby Major penalty of Compulsory Retirement from Service was imposed upon him, under Regulation 4(i)(b)(ii) of Board of Intermediate & Secondary Education Hyderabad employees (E&D) Regulations, 1979.

2. Brief facts of the case, as per pleadings of the parties are that the Petitioner was appointed as the Secretary, Board of Intermediate & Secondary Education Karachi vide Notification dated 16.1.1982 and his service was confirmed on 15.1.1984, thereafter he was appointed as the Chairman, Board of Intermediate & Secondary Education Larkana vide letter dated 06.08.1996. Petitioner has submitted that during his tenure of service as Chairman of the Board he was served with a show cause

notice dated 01.12.1998 with certain charges of misconduct including tempering in the mark sheets and other illegalities. Petitioner has submitted that he denied the aforesaid charges vide reply dated 13.3.1999 but the Competent Authority demoted him from the post of Chairman of the B.I.S.E Larkana. Petitioner being aggrieved by and dissatisfied with the aforesaid action of the Respondent-Board filed Review Petition on 27.08.1999, however he was suspended vide letter dated 31.12.1999, thereafter he was served with another show cause notice on 11.4.2000, for reversion from the post of Chairman of the Board. Petitioner has submitted that he denied the allegations and questioned the orders dated 02.08.1999 and 31.10.2000 passed by the Competent Authority of Respondent-Board, whereby two major punishments were awarded upon the Petitioner i.e. demotion from high rank and Compulsory Retirement from Service, before the learned Sindh Service Tribunal at Karachi (SST) in Service Appeal No. 399 of 2000, which was abated in view of the decision rendered by the Hon'ble Supreme Court in the case of ***Muhammad Mubeen-ul Islam vs. Federation of Pakistan (PLD 2006 SC 60)***. Petitioner has submitted that, in view of the abatement of the aforesaid Service Appeal, he filed C.P No.D-2172 of 2007 before this Court, which was dismissed with certain observations vide order dated 25.2.2013, compelling the petitioner to move an application for restoration of his Service Appeal No. 399 of 2000, which was allowed by the learned SST vide order dated 17.5.2013 and finally the learned SST non-suited the petitioner and directed him to approach this court vide common judgment dated 07.10.2013. An excerpt of the judgment is reproduced as under:-

“23. In the light of above discussion it is held that both the appeals before us at the instance Ghulam Sarwar Thaheem and Naseer Ahmed Leghari who are employees of Board of Intermediate Education Karachi and Sukkur respectively, and are not civil servants and if they are governed by statutory rules, the

proper forum for them is to approach again the Honourable Sindh High Court invoking its writ jurisdiction under Article 199 of the Constitution in the light of the judgments of Honourable Supreme Court. This Tribunal has no jurisdiction.

24. As we have already held that the Sindh Service Tribunal has no jurisdiction in the matter pertaining to the employees of Intermediate and Secondary Boards who are not civil servants, therefore, we would not like to make any observation or give finding on merits. Both the appeals stands disposed of accordingly.”

Petitioner has submitted that this Court vide order dated 25.2.2013 passed in C.P No.D-2172 of 2007, dismissed the petition of the petitioner with the following observations:-

“A preliminary objection has been raised that the present petition is not maintainable as remedy for the petitioner lies both the Sindh Service Tribunal. Mr. Ghulam Sarwar, advocate who happened to be present in Court in some other cases appeared as Amicus Curiae. He states that the Divisional Bench of this Court while holding sittings in Circuit Court at Larkana has held in the case of *Sawan Khan and others v. Board of Intermediate Education Sindh* that the employees of Board of Education are civil servants and their remedy connected with the terms and conditions of service lies before the Sindh Service Tribunal.

Learned counsel for petitioner states that he has gone through this judgment of Larkana Bench but he was of the view that same has been challenged in the Honourable Supreme Court.

In view of the above judgment of this Court in similar matter we are of the view that the petitioner was in the service of province of Sindh and his remedy lies before the Sindh Services Tribunal. Hence we dismiss this petition.

From the record it also appears that petitioner has already approached Sindh Services Tribunal in the year 2000. If the same was not dismissed but was declared to be abated as no order in this regard was placed before this Court, the petitioner shall be entitled to seek his remedy before appropriate forum.”

Petitioner has submitted that in the light of the findings of the learned SST in Service Appeal No.399 of 2000, the Petitioner has approached this Court on 06.11.2013.

3. Mr. Mohsin Qadir Shahwani, learned counsel for the Petitioner has argued that the Petitioner was a confirmed employee of the Board of Intermediate & Secondary Education Karachi, who was wrongly awarded major penalty of Compulsory Retirement from Service without any iota of evidence against him. He next added that the impugned order dated 31.10.2000 of Compulsory Retirement from Service of the Petitioner is also ultra vires and without lawful authority. He next added that the enquiries were conducted in negation of the principles of natural justice as the Petitioner was condemned unheard, therefore, the Inquiry Report submitted to the Competent Authority of the Respondent-Board was null and void having no sanctity in the eyes of law; that the Petitioner informed the Respondent No.1 from time to time regarding the worse condition of Larkana Board but no heed was paid; that the examinations and results were direct responsibility of the Controller of the Examination and the subordinate staff working under him as such the Chairman had no role to play in the affairs of the Larkana Board; that the Inquiry Committee miserably failed to consider the legality and genuineness of the so-called tabulations which were not even signed by the authorized signatories; that the Petitioner was kept in dark throughout the proceedings since he was not even intimated regarding the constitution of the preliminary Inquiry Committee which caused gross miscarriage of justice to him; that the Petitioner was not only deprived of his livelihood as his service was his bread and butter which was taken away by the Respondents without any piece of evidence; that all the actions of the Respondents are violative of the Articles 2-A, 4, 9, 14, 18 & 25 of the Constitution of Islamic Republic of Pakistan, 1973; that out of 08 prosecution witnesses only 02 appeared before the Inquiry Committee one of whom disowned his signature and other did not stand by his own

complaint and the others did not come forward, therefore, the Respondents have failed to bring on record cogent material against the Petitioner to substantiate their claim; that the Petitioner had been victimized and was wrongly awarded major penalty of Compulsory Retirement from Service in the year 2000 and thereafter he became a rolling-stone due to changing of the legal positions in the matter from Tribunal to this Court and from this Court to the Tribunal.

4. At this stage, we queried from the learned counsel for the Petitioner as to how the instant Petition is maintainable against the order dated 31.10.2000. He in reply to the query has submitted that he approached the learned SST within time, which abated his Appeal, which was subsequently restored and disposed of with the directions to the Petitioner to approach this court; thereafter he has approached this Court within time. We agree with this assertion of the learned counsel for the Petitioner as far as laches are concerned and are of the considered view that the instant Petition does not fall within the doctrine of laches as the Petitioner has filed the instant Petition in the month of November, 2013 when the learned SST vide a common judgment dated 07.10.2013 directed him to approach this Court.

5. Mr. Abdul Jalil Zubedi, learned Assistant Advocate General has raised question on the maintainability of the instant Petition and has argued that since the Petitioner has availed the remedy by filing C.P No.D-2172 of 2007, which was decided against him vide order dated 25.2.2013, he had availed the remedy before the learned SST, which was decided vide common judgment dated 07.10.2013 wherein the learned Tribunal had opined that since the Petitioner is not a civil servant and is governed by statutory rules of service, therefore, appropriate forum for him is to approach this

Court under Article 199 of the Constitution. He next added that the Petitioner should have impugned the judgment of the learned SST before the Hon'ble Supreme Court of Pakistan under Article 212(3) of the Constitution; therefore, this Court has no jurisdiction to entertain this Petition on the similar cause of action which has already been decided against the Petitioner in the aforesaid matter. He next submitted that on merits, the Petitioner has no case because he was found involved in grave illegalities in the affairs of the Board of Intermediate & Secondary Education Larkana and an enquiry was also conducted, whereby he was found guilty and the Competent Authority has awarded him major penalty of Compulsory Retirement from Service. In support of his contention, he relied upon the Inquiry Report and the statements recorded before the Inquiry Officer. He next added that the Respondents had made full and final payment to the Petitioner subject to the condition that he submits a No Dues Certificate from the National Bank of Pakistan, Taimuria Branch, North Nazimabad, Karachi after which adjustment of the loan obtained by him in his personal capacity would be made as per law. He lastly prayed for dismissal of the instant Petition.

6. We have considered the contentions of the learned counsel for both the parties and have minutely gone through the material available on record with their able assistance.

7. In the first place, we would like to examine the issue of maintainability of the instant Petition, under Article 199 of the Constitution.

8. To answer the above proposition, we are of the view that the Respondent-Board has statutory regulations of service approved by the Government of Sindh; therefore, this Petition can be heard and

decided on merits. Addressing the second point raised by the learned AAG regarding res-judicata, we are of the view that the Petitioner approached this Court through C.P No.D-2172 of 2007 which was decided against the Petitioner vide order dated 25.2.2013, with the observation “*that petitioner has already approached Sindh Services Tribunal in the year 2000. If the same was not dismissed but was declared to be abated as no order in this regard was placed before this Court, the petitioner shall be entitled to seek his remedy before appropriate forum.*” Subsequently the learned SST vide judgment dated 07.10.2013 opined that since the Petitioner is not a civil servant and is governed by statutory rules of service, therefore, appropriate forum for him to approach this Court under Article 199 of the Constitution. Therefore, in our view, this is not a similar relief which cannot be claimed by filing subsequent legal proceedings as it would not fall within mischief of constructive res-judicata. Reliance is placed on the case of ***State Bank of Pakistan through Governor and others vs. Imtiaz Ali Khan and others (2012 SCMR 280)***. The objection of the learned AAG is, therefore, not sustainable under the law, since our intention is to decide the *lis* on merits.

9. Having decided on the maintainability of the instant Petition, Issue, which agitate the controversy at hand, could be reduced to the following:-

i) Whether Departmental Inquiry into the allegations with the approval of the Competent Authority was conducted by the Respondent-Board before imposing major penalty of “Compulsory Retirement from Service” upon the Petitioner or not?

10. The documents of the enquiry proceedings have been placed on Court’s record by the parties, which relate to the issue of show cause notices, charge sheet etc. issued to the Petitioner.

11. On merits, the moot point involved in this Petition is whether the Petitioner can be reinstated in service of the Respondent-Board, when he has already reached at the age of Superannuation i.e. 60 years of age during the pendency of the *lis* between the parties before different legal fora.

12. The allegations leveled against the Petitioner as set forth in the charge sheet (available at page-19 of the file) is as under:-

1. **“Large-scale public complaints are on the record alleging that the marks and divisions of the candidates who appeared at the HSC Part I & II Annual Examination 1997, have been changed on acceptance of money.**
2. **You vicariously liable for the apparent erasing, over writing, disfiguring and discrepancies, such as award of inflated marks to the large No. of candidates (list attached as Annexure “A”) appearing at the said examination from Jacobabad, Larkana and Shikarpur centers, and committed many other irregularities in this regard.**
3. **That you seek to have aided and abated the commission of such illegalities by keeping your eyes deliberately shut on the modus operandi by the officers/officials of the Board while committing such malpractices on large scale.**
4. **That in no case you can absolve yourself from the allegations of tempering and interpolation of result and also that you miserably failed to discharge your duty as laid down in the Acts, Ordinance, Rules and Regularity of Sindh Board of Intermediate and Secondary Education and you are therefore guilty of “misconduct”.**

13. The Respondents have built up their case on the basis of the Preliminary and Final Inquiry Reports. Per learned AAG that comes within the ambit of the definition of “misconduct”, as defined under Regulation 4(i)(b)(ii) of Board of Intermediate & Secondary Education Hyderabad Employees (E&D) Regulations 1979.

14. Prima-facie, the opinion of the enquiry committee dated 21.7.1998 show the factual position of the case as under:-

“After having gone through facts and figures shown in above paras it is clear that

there is malpractice in B.I.S.E Larkana on very large scale.

i) The candidates have been favoured by awarding the marks which they did not actually secure.

ii) The record is not properly maintained.

iii) The secret and sacred record of the Board has been tempered on mass scale. Rubbing, over-writing; and cutting is very common.

Because of the above illegal acts of the concerned staff of B.I.S.E Larkana, the deserving & poor candidates remained unselected professional Colleges and their life has been ruined because of these black sheep. This malpractice on such big scale could not have been done without the active involvement, connivance or knowledge of the Chairman B.I.S.E. Larkana, Controller of Examination, Asstt: Controller (S) Superintendent H.S.C. (S). etc.

Controller of Examination

Controller of Examination is Incharge of the Examination Section, subject to control of the Chairman. It is his responsibility to keep check on the working of section under his control, supervise proper maintenance and secrecy of record etc. He has utterly failed to carry out his duty.

Asstt: Controller of Exam: (S)/H.S.C.

As learnt/observed all the work as carried out in his direct supervision. The entire works i.e. codification, assessment, compilation of results through the tabulators, announcement of result etc. were carried under his supervision.

It is his prime duty to maintain record. It was learnt that he has also played active role in irregularities.

Supdt: H.S.C. (S)

Being Incharge of the section he is at responsible for safe custody of the record. The record has been mutilated out nothing has been done by him.

Chairman:

The role of Chairman can also be not ruled out. As per provision of the Ordinance for constitution of the Boards in Sindh, the Chairman is the Head of the organization and is responsible for proper working of the organization. He has to keep strict check on all acts of his subordinate officers and sections. He is Principal executive and academic officer of the Board. Since the malpractices have been committed in the Board on very large scale it is totally possible that the Chairman, remained ignorant about all these legal acts. When applications were being made by affected candidates, news were publishing in various newspapers for the malpractices was his duty to check the relevant record of the secret sections and himself take necessary action. He has done

absolutely nothing to either check irregularities at the initial stage or rectify the thing on even after great public hue and cry.

Irregularities were also found in purchase of Double Cabin pick up which has been purchased without calling tenders.

Proposal

Mr. Ghulam Sarwar Thahim, Chairman, B.I.S.E. Larkana may be relieved from the post with immediate effect. He may not be posted on any job till proceedings under E&D Rules are completed against him. He can be sent on forced leave also.

Mr. Khalid Saifullah Chachar, Controller of Examinations, Mr. Imdad Ali Mahar, Asstt: Controller of Examination, Mr. Zaheeruddin Daudpoto, then Superintendent H.S.C (Secret) may be suspended.

A detailed enquiry may be undertaken by a three member committee of senior educationists who may in addition to detailed enquiry about tempering of record, may also suggest ways and means to rectify the injustice done to the students who had rightful claim to get admitted into professional colleges.

Sd/- (AHMED BUX NAREJO) Deputy Secretary	Sd/- (MUHAMMAD MUDASIR KHAN) Section Officer.III
Sd/- (MAHMOOD-UL-HASSAN KHOKHAR) Controller of Examination. B.I.S.E. Sukkur.	

15. In our view, before proceeding further we have to look at the order dated 31.10.2000 issued by the Respondent-Board against the Petitioner in detail to find out as to whether any law has been violated and whether this Court has the jurisdiction to examine the propriety of the impugned action taken against him. For convenience, the contents of the impugned compulsory retirement from service order dated 31.10.2000 is reproduced verbatim as follows:-

”O R D E R

NO:GS/10(5)9/97(SO-III): WHEREAS, Mr. Ghulam Sarwar Thaheem, a B-19 Officer of Board of Intermediate Education, Karachi and former Chairman, Board of Intermediate & Secondary Education Larkana, in response to this review petition made against Order No. NO:GS/10(5)9/97(SO-III)/1420 dated 02.08.1999, was given Show Cause Notice under Efficiency and Discipline Regulations of the Board by the Governor Sindh/Controlling Authority

vide Memo No. NO:GS/10(11)96(SO-III)/394 dated 11.04.2000, why penalty awarded by him under Order NO:GS/10(5)9/97(SO-III)/1420 dated 02.08.1999, should not be enhanced.

AND WHEREAS, the said Mr. Ghulam Sarwar Thaheem, has submitted his reply to the said Show Cause Notice.

AND WHEREAS, the said Mr. Ghulam Sarwar Thaheem, neither through his written reply to said Show Cause Notice nor during personal hearing given by Governor Sindh/Controlling Authority could absolve himself from the charges and charge for gross negligence has been established against him;

NOW THEREFORE, in exercise of the powers conferred upon the under Regulation 10(2) of the Board of Intermediate & Secondary Education, Hyderabad (E&D) Regulations 1979, applicable for Board of Intermediate & Secondary Education, Larkana, I Governor Sindh/Controlling Authority, Board of Intermediate & Secondary Education of Sindh and Authority hereby order with immediate effect imposition of a major penalty of compulsory retirement from service as prescribed in Regulation 4(i)(b)(ii) of Board of Intermediate & Secondary Education Hyderabad employees (E&D) Regulations, 1979, on said Mr. Ghulam Sarwar Thaheem, Ex-Chairman, Board of Intermediate & Secondary Education, Larkana and presently O.S.D. Board of Intermediate Education, Karachi.

**By order of Governor Sindh/Controlling Authority
Board of Intermediate & Secondary Education
In Sindh/ Authority"**

16. In the light of foregoing position of the case, we are of the view that in service matters this Court has the jurisdiction under Article 199 of the Constitution to examine the propriety of an impugned action taken against the Petitioner, when the action of the statutory Board having statutory rules of service, is in disregard of the procedural requirements, in violation of the principle of natural justice and on the ground that the Petitioner has been condemned unheard in violation of Article 4 and Article 10-A of the Constitution.

17. Perusal of the impugned compulsory retirement from service order dated 31.10.2000 reveals that the Petitioner had been non-suited on the basis of Preliminary inquiry report and final

enquiry reports. Record further reveals that the Petitioner was not allowed to join in both the inquiry proceedings initiated against him. Prima-facie, all the actions were taken against the Petitioner behind his back which has caused grave miscarriage of justice. In our view, the Petitioner though appointed as Chairman of the Board, was entitled to a fair opportunity to clear his position in terms of Article 4, 10-A and 25 of the Constitution of Islamic Republic of Pakistan 1973.

18. We have gone through both the Inquiry Reports, thus, it is prima facie clear that the enquiry committee, though we have reservation on the constitution of the enquiry committee below the rank of officials in BPS-20, who based its findings against its Chairman on the premise that he failed to perform his duties being a Controlling Authority of the Board, however, it had been made clear in the reports that the enquiry committee was not in a position to fix individual responsibility on any of the official of the Board on the aforesaid charges.

19. We have also noticed that two individuals/complainants were turned up and joined the enquiry proceedings, one of them namely Abdul Latif stated that, personally he had not heard or seen any Board Official demanding or accepting bribe money from any candidate. He only stated that he had heard the two selected candidates Vijay Kumar and Aneel Kumar as saying that they had secured undue marks on payment of Rs.2 lakhs from Board officers. But he could not give the names of the Board officials who received money when he was asked to make comments thereon. So far as the applicant Jawed Ahmed is concerned, he denied his signature on the complaint. According to him he does not know anything about the allegations made in it. He however added that he had heard from some students that Board Officials were

accepting bribe money for awarding undue marks. No other complainant or even other candidate or person turned up on that day or even thereafter to substantiate the allegations against the Petitioner.

20. From the foregoing version of Abdul Lateef and Jawed Ahmed, prima-facie, they had not disclosed the involvement of the Petitioner in the aforesaid matter, thus in our view no adverse inference can be drawn against him in this behalf. For convenience, an excerpt of the findings of the final enquiry committee is as under:-

“40. So the said two candidates could not morally raise the cry about malpractice. They themselves appear to be partisan in alleged illegality.

41. As far as determination of the extent of involvement of the Board employees is concerned it is essential to spell out the duties and responsibilities of the concerned particularly Chairman, Controller of Examination, Assistant Controller of Examinations and other staff member related to the conduct of examinations as described in details in Sindh Boards of Intermediate and Secondary Education Ordinance 1972.

42. Rule 15.4 lays down that it shall be the duty of the Chairman to ensure that the provisions of this Ordinance and the Regulations and Rules are faithfully observed and carried out and he shall exercise all powers necessary for this purpose. Moreover, the First Regulations of the Boards as specified by the Schedule to the Sindh Boards of Intermediate and Secondary Education Ordinance 1972 lays down the powers and duties of the Chairman as under:

“The Chairman shall exercise control over the office of the Board as its principal executive and academic officer and shall do all acts to ensure that the officers and the staff properly perform the duties entrusted to them.”

43. The same regulations lay down the duties and powers of the Controller of Examinations as under:

The Controller of Examinations shall, subject to the control of the Chairman, be incharge of the Examination sector of the Board and shall:

- (i) Make arrangements for the conduct of all examinations of the Board;**
- (ii) conduct official correspondence of the Board relating to the examinations**

(iii) perform such other duties as may from time to time be assigned to him by the Chairman.

44. The responsibilities of the Controller of Examinations include keeping strict vigilance the working of the examination section with a view that proper secrecy of the record is maintained and the sanctity and credibility of the examinations is uphold.

45. As far as the duties and responsibilities of the Assistant Controller of Examinations (Secret) are concerned he has to carry on entire work of the section such as codification, assessment, compilation and announcement of results with complete secrecy in a very diligent manner. It is also the duty and responsibility of the Assistant Controller (Secret) to ensure that the confidential record pertaining to examination is properly maintained in the manner as specified by the rules and regulations of the Board in case of any irregularity such as tempering or interpolation of results second he has immediately to report the same to the Controller of examination.

46. Since the officers right from the Chairman to the Superintendent HSC (Secret) failed to perform their duties in accordance with the provisions of the acts, ordinances and regulations of the Board, they are guilty of misconduct. There is a provision of penalty measures as laid down under the Efficiency and Discipline Regulations, 1979.

47. There is however no evidence to fix the individual responsibility. The related information largely comprised figure work rendering process of identification through hand writing very difficult. Therefore they all the Chairman to Office Superintendent appears to be vicariously liable for the apparent erasing, over-writing, disfiguring and discrepancies. The exact share of their liability could not be ascertained though their effective culpability is very much clear. They seem to have aided and abeted the commission of such illegalities by keeping their eyes deliberately shut. There could be also no excuse to plead that some one bad acted at the instance of another.[emphasis added]

48. In no case the Controller of Examinations (Mr. Khalid Saifullah Chachar), the Assistant Controller of Examinations Secret (Mr. Imdad Ali Mahar) and the Superintendent Incharge HSC Secret (Mr. Zaheeruddin Daudpoto) can absolve themselves from allegations of tempering and interpolation of results. The Chairman (Mr. Ghulam Sarwar Thaheem) has also failed miserably to discharge his duties as laid down in the Acts, Ordinances, Rules & Regulations of the Sindh Board of Intermediate and Secondary Education.”

21. Another moot question which arises in the present proceedings is as to whether the disciplinary proceeding conducted against the Petitioner was in accordance with law or not?

22. We have noticed that under Regulation 2 (h) of Board of Intermediate & Secondary Education Hyderabad employees (E&D) Regulations 1979, the term "Misconduct" is defined. Regulation 2 (f) (g) contemplate Minor and Major penalties. Regulation 2 (c) empowers the authorized officer to direct enquiry against an employee of the Board through an enquiry officer or an enquiry committee or if he is satisfied, he may order that there would be no enquiry against the said person. If it is decided that there should be an enquiry either by an enquiry Officer or an enquiry committee then the procedure as laid down under Regulation No. 6(2), 3(a) (b), 4(a) (b) is to be followed. The requirement enumerated under Regulation 7(1)(3) is that; charge shall be framed and the said employee would be allowed to reply to the charge after which evidence is to be recorded by examining witnesses in support of the charge by allowing opportunity to the said employee to cross examine the said witnesses. The said employee is also permitted to produce his/her own witnesses in his/her defence.

23. In the present case no inquiry into the allegations leveled by the Respondent-Board against the Petitioner was conducted in the manner as prescribed under the law and the required procedure, which, included issuance of charge sheet, also was not followed, so as, to ensure the transparency in arriving at the decision of imposing Major penalty of Compulsory Retirement from Service upon the Petitioner. The charges / statement of allegations against the Petitioner, as discussed supra, clearly depicts that the same were to be established through proper enquiry as provided Under

Regulation 6 (1) of Board of Intermediate & Secondary Education Hyderabad employees (E&D) Regulations 1979.

24. We have noticed that the enquiry proceedings, which were conducted by way of fact finding were without recording the evidence of the parties on oath and opportunity of cross-examination of the witnesses to the Petitioner.

25. In order to appreciate the aforesaid legal proposition as to whether the enquiry procedure, which is provided Under Regulation 6 (1) of Board of Intermediate & Secondary Education Hyderabad employees (E&D) Regulations 1979, could be carried out and conducted by way of fact finding alone?

26. It is a well settled law that if the enquiry officer has decided that there should be an enquiry then the procedure laid down in the aforesaid Regulation has to be followed and the requirements enumerated therein had to be adhered to i.e. charge shall be framed and the said employee would be allowed to give reply of those charges after which evidence is to be recorded by examining the witnesses in respect of the charges. The said employee can also produce witnesses in his/ her defence.

27. In the present case, it is noted that, this procedure has not been followed in its letter and spirit and the witnesses were not examined in respect of the charges on oath, as provided under the law, which was necessary before imposing major penalty upon the said employee. The manner in which enquiry proceedings were conducted by way of fact finding, without examination of witnesses, in support of the charge or defence, in our view could not be approved as it was not in consonance with the requirements of the Regulation No. 6 (1) of Board of Intermediate & Secondary Education Hyderabad employees (E&D) Regulations 1979. On the

aforesaid proposition of law, we are fortified with the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of ***Pakistan Defense Housing Authority & others Vs. Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707)***.

28. We have noticed that in the Inquiry Report, no comment has been made upon the said plea taken by the Petitioner and deliberation made thereon. Hence, in our view, the action suggested by the enquiry committee for Compulsory Retirement from Service of the Petitioner, which is in disregard of the procedural requirements and is violative of the principles of natural justice, was not sustainable under the law. Our view is supported by the decision rendered by the Honorable Supreme Court in the case of ***Jan Muhammad Vs. The General Manager, Karachi Telecommunication Region, Karachi and another (1993 SCMR 1440)*** wherein it was held as follows:-

“6. In Government Servants (Efficiency and Discipline) Rules, 1973, “misconduct” is defined. Rule 4 contemplate minor and major penalties. Compulsory retirement is included in major penalties. Rule 5 empowers authorized officer to direct enquiry against Government servant through an Enquiry Officer or Enquiry Committee or if he is satisfied, may order that there would be no enquiry in the interest of security of the country. If it is decided that there should be enquiry either by Enquiry Officer or Enquiry Committee then procedure laid down in Rule 6 is to be followed and the requirements enumerated therein are that charge shall be framed and Government servant proceeded against would be allowed to reply to the charge after which evidence is to be recorded by examining witnesses in support of the charge allowing opportunity to the affected Government servant to cross-examine the witnesses and he can also produce witnesses in his defence. It appears that in the instant case this procedure as such was not followed in letter and spirit and witnesses were not examined in support of the charge. It was necessary for that reason that ultimately major penalty has been imposed upon the appellant. The manner in which enquiry proceedings were conducted by way of questionnaire without examination of witnesses in support of charge or defence cannot be

approved as it is not consistent with requirements of Rule 6 of the above-mentioned Rules. Before the Service Tribunal in written objections filed on behalf of respondents order of compulsory retirement has been defended on other unconnected grounds that appellant was inefficient and unwilling worker. In the enquiry report no comment is made upon plea of appellant that his immediate superior officer recommended that appellant was overburdened with his own work and should not be given additional work. For the facts and reasons mentioned above, we are of the view that order of compulsory retirement is not sustainable as enquiry was not held in accordance with procedure laid down in Rule 6 of Government Servants (Efficiency and Discipline) Rules, 1973. We, therefore, set aside impugned judgment of Service Tribunal and order of compulsory retirement of appellant and direct that he be reinstated with back benefits. Since we are striking down order of compulsory retirement of appellant on the ground that enquiry was not held as required under the rules, it is open to the respondents to take action against the appellant on that ground but strictly according to law and rules. Appeals is allowed.”

29. So far as the issue of Petition earlier filed by the Petitioner is concerned that was dismissed on the ground that the Petitioner was not a civil servant, therefore, he had already approached the learned SST in the year 2000 as the same was declared to be abated, therefore, he was directed to seek an appropriate remedy and the remedy which he availed before the learned SST was also disposed of vide common judgment dated 07.10.2013 with the observation that the Petitioner is not a civil servant, therefore, his remedy was before this Court and not before the learned SST. In our view, this is correct proposition of law, therefore, the Petitioner has rightly approached this Court and the matter between the parties needs to be decided on merits.

30. We have also examined the enquiry proceedings and found that the enquiry was not conducted in accordance with law and ample opportunity was not provided to the Petitioner, therefore, the

Petitioner was wrongly awarded the punishment of major penalty of Compulsory Retirement from Service.

31. We have taken cognizance of the matter and cannot overlook or ignore that the Petitioner was awarded major penalty of Compulsory Retirement from Service, which is not permissible under the law. In this regard, let us shed some light on the word 'Misconduct' which means bad faith and willfulness may bring an act of negligence within the purview of the misconduct but lack of proper care and vigilance may not always be willful to make it a case of grave negligence inviting severe punishment. Philosophy of punishment is based on concept of retribution, which may be either through method of deterrence or reformation. Purpose of deterrent punishment is not only to maintain balance with gravity of wrong done by a person but also to make an example for others as a preventive measure for reformation of the society.

32. Concept of minor punishment in law is to make an attempt to reform individual wrongdoer. In service matters, the extreme penalty for minor acts depriving a person from right of earning defeats the reformatory concept of punishment in administration of justice. On the foresaid proposition of law, we are fortified with the decision rendered by the Hon'ble Supreme Court in the case of ***Auditor General of Pakistan & others vs. Muhammad Ali & others (2006 SCMR 60)***.

33. It appears from the record that somewhere in 2007, the Petitioner filed appeal before the learned SST against the impugned order, in view of the decision rendered by the Hon'ble Supreme Court in the case of ***Muhammad Mubeen ul Islam vs. Federation of Pakistan (PLD 2006 SC 602)***. The learned SST put off its hands from the case of the Petitioner as his appeal became abated in view of the judgment *supra*. But the learned SST however

directed the Petitioner to take recourse to the competent forum under Article 199 of the Constitution before this Court. Feeling aggrieved of the impugned order passed by the learned SST the Petitioner has approached this Court on the premise that the employees of B.I.S.E Larkana are not civil servants, however, as per record they have statutory rules of service which have been placed on record. Therefore, in our view, this Court has jurisdiction to entertain the captioned Petition, hence, the objection of the learned AAG to the maintainability of the instant Petition is not sustainable in law, which is hereby rejected.

34. So far as merits of the case are concerned dispensing with the regular inquiry and awarding major penalty of compulsory retirement could not have been imposed upon the Petitioner without holding regular departmental inquiry when the charges were denied by the Petitioner.

35. From perusal of the Inquiry Report, we are clear in our mind that the allegations leveled against the Petitioner were based on the evidence of two witnesses who did not disclose the culpability of the Petitioner. Record does not show the involvement of the Petitioner as the Inquiry Officer opined that the Chairman shall have exercised the powers but he did not disclose what were the powers which were required to be exercised by him, if anybody was involved in corruption. We also do not find any appropriate justification given in the Inquiry Report in view of such no sanctity can be attached to such Inquiry Report, therefore, the punishment awarded to the Petitioner by the Respondent No.1 for Compulsory Retirement from Service appears to be harsh under the law.

36. We have been informed during the course of arguments that the Petitioner has attained the age of superannuation, therefore,

only he has kept the Petition alive in order to remove the stigma which has been imposed upon by him through the impugned Notification, which is pinching his conscious. At this stage, we have already opined in the preceding paragraph that no material has been placed on record before this Court to suggest that there was any cogent material against the Petitioner to substantiate the allegations leveled against him and on that basis no punishment can be provided or awarded under the law. Moreover the Petitioner has attained the age of superannuation and no pensionery benefits have yet been awarded to him.

37. From the facts and the reasons mentioned above, we are of the view that the order of Compulsory Retirement from Service dated 31.10.2000 is not sustainable under the law as enquiry was not held in accordance with the procedure as laid down Under Regulation 6 (1) of Board of Intermediate & Secondary Education Hyderabad employees (E&D) Regulations 1979.

38. In the light of the above facts and circumstances of the case, this Petition is disposed with the directions to the Competent Authority of the Respondents to award pensionery benefits (superannuation) to him within a period of 03 months' time from the date of receipt of this judgment in accordance with law.

Karachi:
Dated: 10.12.2018.

JUDGE

JUDGE