

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D -7550 of 2018

Mir Abdul Majeed son of Mevo Khan

Versus

The Overseas Employment Corporation and 03 others

Date of hearing &
Decision : 02.02.2021

Petitioner present in person.

Mr. Abdul Salam Memon, advocate for respondents 1&2.

Mr. Muhammad Nishat Warsi, DAG.

ORDER

ADNAN-UL-KARIM MEMON, J. - Through this petition, the petitioner has assailed the order dated 18.12.2017 passed by the learned Full Bench of National Industrial Commission, at Karachi (Full Bench of NIRC), whereby order dated 01.09.2016 passed by the learned Single Bench of National Industrial Commission, at Karachi (Single Bench of NIRC) was maintained; and, his grievance application No.4B (224)/2012-K for setting aside his termination from service was dismissed. The petitioner is also seeking reinstatement in service as Driver in the respondent-Overseas Employment Corporation, which was dispensed with vide order dated 26.7.2012.

2. The case of the petitioner is that he was appointed as Driver in the respondent-corporation in the year 2002. During his tenure of service, he was served with show-cause notice and charged sheet dated 02.05.2012 with the allegations that he received Rs.4,25000/- from one Mumtaz Ali for sending him abroad and he allegedly received the token amount of Rs.1,25000/- in cash and the balance amount was settled to be paid to him on-line payment into his Bank Account. The respondents initiated Disciplinary proceedings against him, through a fact-finding committee, and was found guilty of misconduct. The competent authority awarded him the major penalty of termination of service vide order dated 26.7.2020. Petitioner assailed his termination from service order by serving upon the respondents a Grievance Notice dated 2.8.2012 under section 33 of Industrial Relations Act, 2012, which was not responded by the

management, compelling him to approach the learned Single Bench of NIRC by filling petition No.4B (224)/2012-K which was dismissed vide order dated 01st September 2016 on the sole ground that alleged amount paid by the complainant was deposited in his Bank Account, though petitioner denied the aforesaid allegations. The petitioner being aggrieved by and dissatisfied with the said decision challenged the same before the Full Bench of NIRC, Karachi in Appeal No.12(106)/2016-K, which was too dismissed vide order dated 18.12.2017 on the same analogy as decided by the learned Single Bench of NIRC. The petitioner being aggrieved by and dissatisfied with the aforesaid decisions impugned before this Court on the ground that neither the purported amount belong to the complainant nor was deposited by him in his Bank Account; that on the said charges he was saddled with criminal liability as well wherein he had already been acquitted by the learned trial Court vide judgment dated 14.11.2016 passed in Special Case No.06/2014 arising out of FIR No.45/2014 registered for an offense under section 22(b) of EO 1979 of Police Station FIA AHTC Karachi.

3. Petitioner who is present in person has submitted that there was/is no concrete evidence available against him to the extent whether he received any amount from the private party or otherwise to procure the appointment in abroad. He further submitted that he had been made a scapegoat by the respondents to save the original culprits from the clutches of law; that he being Driver was not competent authority to take risk of such purported appointment of any individual in the respondent-corporation; that the aforesaid allegations were not properly attended and erroneously discarded by both the courts below; and, while in the departmental proceedings nothing could be brought on record against him to substantiate the aforesaid allegations even the complainant's attendance in the inquiry proceedings was not procured by the inquiry officer and his statement was not recorded on oath; that he was removed from service with stigma without observing legal procedure as provided under the law and in violation of fundamental principles of natural justice and equity; and, that the orders passed by both the NIRCs were/are unlawful and erroneous; hence, he prayed for striking down of both these orders.

4. Mr. Abdul Salam Memon, learned counsel for the respondent-corporation, has raised the issue of maintainability of the instant Petition on two counts, firstly the case of petitioner falls within the ambit of laches, secondly, concurrent findings arrived by the courts below cannot be interfered

with in constitutional petition thus, the Petitioner is not entitled to the relief as claimed in the instant Petition. He further argued that the petitioner's account was thoroughly checked and was found with the amount he procured from the private party which was/is sufficient proof regarding his guilt. He asserted that admittedly malpractice and gross misconduct was conducted by the petitioner; and, he was rightly found guilty of the charges, leveled against him, by the inquiry officer, and thereafter he was served with the notice of personal hearing and finally his services were dispensed with under the law. Per learned counsel, the Grievance Application of the petitioner was dismissed vide order dated 01.09.2016 and the same order was challenged by the petitioner through an appeal before the Full Bench of NIRC that was also dismissed vide order dated 18.12.2017. Per Counsel, the allegations leveled by the respondents are serious and cannot be condoned; and, now he has approached this Court with unclean hands thus no relief is required to be given to him under the law. He lastly argued that merely acquittal in a criminal case is no ground to claim that departmental proceedings ought to be washed away.

5. Mr. Muhammad Nishat Warsi, learned DAG has adopted the arguments of learned counsel representing the respondent-corporation.

6. We have considered contentions of the petitioner and learned Counsel representing the respondent-corporation as well as learned DAG and have minutely gone through the material available on record.

7. In the first place, we would like to examine the issue of maintainability of the instant Petition under Article 199 of the Constitution, 1973.

8. This petition is maintainable under Article 199 of the Constitution 1973 on the premise that this is a case of misreading and non-reading of evidence by both forums below. So far as concurrent findings are concerned apparently the findings arrived by both the forums below were based on consideration of weak evidence with no corroborative evidence, as such the major penalty imposed upon the petitioner was/is unjustified. It is well-settled law that if the concurrent findings are perverse, the same can be set at naught by this Court.

9. Having decided the maintainability issue, the primordial questions in the present proceedings are whether there was any evidence against the Petitioner that he had received an amount of Rs.4, 25,000/-for sending the private person abroad for his employment? And whether regular Departmental Inquiry into the allegations was conducted by the respondent-corporation before imposing the major penalty of "termination of Service" upon the Petitioner or not?

10. The documents of the inquiry proceedings have been placed on Court's record by the respondents.

11. The respondents have built up their case based on the fact-finding inquiry report dated 14.6.2012 as discussed supra. Per learned counsel for the corporation that comes within the ambit of the definition of "misconduct". Petitioner refuted the claim of respondents on the premise that major penalty imposed upon him was based on Fact-finding inquiry and the regular inquiry was not conducted; and, no other codal formalities were observed even chance of cross-examination to the witnesses was not provided to the petitioner during the inquiry proceedings.

12. Prima facie, the case of the petitioner is based on the fact-finding inquiry report, which reads as under:

"Being appointed as an Enquiry Officer, the undersigned complainant would be maintained justice and equity. As already assumed the said official Mr. Abdul Majeed, and the reported, the undersigned fixed various dates of hearings and duly informed that said official Mr. Abdul Majeed to attend the proceedings and face the complainant to his complaint and prove his version as laid down in his reply to the charge sheet. That the reply of the charge sheet of Mr. Abdul Majeed, is not justified according to the statement of Bank accounts, as on 16 November 2011 Bank statement shown that Rs. 299,652.00 was deposited in his account which is also showing in the Bank Receipt provided by the complainant, having a balance Rs. 357,062:00: but the same amount was not withdrawn as stated by Mr. Abdul Majeed in his statement (Annexure "O"). Moreover, it is mentioned here that the above-named official is a low-paid employee, the Bank statement has shown a total credit transaction Rs. 2,109,071.56 during the period from January 2011 to May 2012 which itself an indicator of illegal gratification. I the undersigned, therefore give my findings against Mr. Abdul Majeed (under the evidence of Bank statement) for taking illegal gratification from the complainant named above for sending him abroad for employment, this act of the above-named official clearly amounts to misconduct, hence punishment should be imposed."

13. Perusal of the above report explicitly show that allegations leveled by the respondents against the petitioner were not probed in the manner as prescribed under the relevant law and the required procedure was not followed, so as, to ensure transparency in arriving at the decision of imposing Major penalty of termination from Service upon the Petitioner. The charges/statement of allegations against the Petitioner, as discussed supra, clearly depicts that the same was required to be established through proper inquiry as provided under the law and not otherwise.

14. We have further noticed that the inquiry 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. It is a well-settled law that if the inquiry officer has decided that there should be an inquiry then the procedure laid down in the law has to be followed and the requirements enumerated in law 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. 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 a major penalty upon the said employee. The manner in which inquiry 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 law. 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). Hence, in our view, the action suggested by the inquiry committee for termination 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. On the aforesaid proposition, 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 inquiry 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 abovementioned 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.”

15. In service matters, the extreme penalty for minor acts depriving a person of the right of earning defeats the reformatory concept of punishment in the administration of justice. On the aforesaid 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). So far as merits of the case are concerned dispensing with the regular inquiry and awarding major penalty of termination from service could not have been imposed upon the Petitioner without holding regular departmental inquiry when the charges were denied by the Petitioner.

16. Prima facie, the petitioner was estopped by the respondent-corporation to work through the impugned order dated 26.7.2012, therefore, we deem it appropriate to take into consideration the issue of back benefits on the premise that he has specifically pleaded that he was wrongly terminated from service as such he is entitled to the consequential benefits.

17. In view of the above facts and circumstances of the case discussed above, the instant Constitution Petition is allowed, both the impugned orders passed by the learned National Industrial Commission are set aside, consequently, termination order dated 26.7.2012 passed by the respondent-corporation is also set aside. Resultantly, the petitioner is directed to be reinstated in service forthwith along with back benefits as Driver in the respondent-Overseas Employment Corporation.

18. These are the reasons for our short order announced in open Court on 02.02.2021, whereby we have allowed the instant petition.

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