

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Aftab Ahmed Gorar

Mr. Justice Adnan-ul-Karim Memon

C.P. No. D-2954 of 2021

Muhammad Usman
Petitioner through : Syed Shoa-un-Nabi, advocate

Respondents
through: : Mr. Ali Safdar Depar, AAG

Date of hearing
& order : **28.02.2022**

ORDER

Through this petition, the petitioner seeks a declaration to the effect that he may be reinstated in service because of his acquittal in the criminal case for which he was dismissed from service. Extract of the judgment dated 30.01.2015 passed by the learned Special Judge, Anti-corruption (Provincial) Hyderabad @ Camp Mirpurkhas, is reproduced as under:

"POINT NO.1:

13- *The prosecution, in order to prove this point, has examined total 08-PWs but there are material contradictions in their evidence. The PW Akhter Hussain Memon, the then District Agriculture Supply Officer, SASO Umerkot is the star witness of this case in whose complaint (Exh-10/E), the FIR of this case was registered but surprisingly the FIR bearing crime No. 11/1998 of P.S-ACE Umerkot which is the root of the case, is not produced by the prosecution during the evidence of any PWs which create heavy doubt in the prosecution case.*

14- *The PWs Akhter Hussain Memon, Magistrate Mitha Ram, Abdul Jabbar Solangi and Store Inspector Ghulam Asghar Leghari were present at the time of handing over the charge to successor of accused namely i.e. PW Abdul Jabbar Solangi who had visited the different godown and prepared the mashirnama but these mashirnama (Exh-8/A to 8/F) were not produced in original by the prosecution through PW Metha Ram, surprisingly, this PW Mitha Ram stated in his cross examination that he don't know who had attested these mashirnama. This case is based upon the mashirnama prepared at different godowns but the prosecution failed to produce its original which creates doubt in the prosecution case.*

15- *The PW Muhammad Hassan Sahito who conducted preliminary enquiry of this case, had admitted in his cross examination that he had recommended to register the case against Ghulam Muhammad Leghari, Akhter Hussain Memon Ghulam Asghar, Muhammad Usman and Abdul Qudous. This version was denied by the PW Akhter Hussain Memon in his cross examination, however, he admitted that Ghulam Asghar was nominated in the FIR. This aspect also makes the case of prosecution dubious one.*

16- *The prosecution has not shown the amount allegedly misappropriated in respect of the alleged shortage of fertilizers but the PW Akhter Hussain Memon disclosed the alleged misappropriated amount as Rs.24,58,646/- which was not disclosed by any other PWs which too create doubt in the prosecution case.*

17- *Since the PWs examined before this court have given contradictory evidence even the material documents i.e. FIR and original mashirnama were not produced by the prosecution during evidence which create heavy doubt and as per settled principle law if a single doubt occurred, the benefit of the same be given to the accused therefore, I find that the prosecution is not able to prove this point against any of the accused regarding criminal misconduct and misappropriation therefore, this point No. 1 is hereby answered in the negative.*

POINT NO.2:

18- *As a result of above discussion and findings, I have come to the conclusion that the prosecution failed to prove its case against the accused beyond any reasonable doubt, to be the guilty of alleged offences, therefore I acquit the accused Muhammad Usman Marri U/S 245(i) Cr.P.C. He is present on bail, therefore, his bail bond stands cancelled and surety is discharged. Since the absconding accused Abdul Qudous has absconded away to Germany during trial and PWs have supported the case against him therefore, the case against him be kept on formant file till his*

arrest or appearance before this court. Pronounced in open court. Given under my hands & seal of this court on this January, 30th 2015."

2. Petitioner is an ex-Sub Sales Inspector, in Sindh Agricultural Supplies Organization (SASO), who was found to have misappropriated the stock in his custody. Where after the inquiry was ordered and in the inquiry proceedings he was involved. After that show cause notice was issued to him in the reply whereof he denied the allegations however the competent authority was not satisfied with his reply and a final show-cause notice was served upon him, and finally dismissed from the service. He challenged the final order of dismissal before the learned Sindh Service Tribunal at Karachi and his appeal was dismissed on 14.11.2003 for want of jurisdiction. Petitioner based on acquittal order again approached the learned SST, however, his appeal was rejected vide order dated 19.9.2019 on the ground that the original order dated 14.11.2003 could not be opened on the ground of acquittal from the criminal case. An excerpt of the order dated 19.09.2019 passed by the learned SST is reproduced as under:-

"The appellant Sub Sales Inspector, Sindh Agricultural Supplies Organization (SASO) was found to have misappropriated the stock in his custody. Thereafter he was transferred and directed to hand-over the charge to his successor. He did not obey that transfer order and selected to slip away. Whereafter enquiry was ordered and the result of the detailed enquiry was that he misappropriated the stock and was responsible of disobedience of the transfer order and absence from the office during suspension period. After that show cause notice was issued to him in the reply whereof he denied the allegations but on perusal his reply shows the admissions of many things. He has stated in para 8 of his reply that transfer order was not served upon him and only signature was obtained on the office copy, about absence he says that in the suspension order it was not mentioned that where should he appear and which office he should attend. This way he admitted the disobedience of the transfer order and absence from the office.

In the result of said departmental enquiry he was issued show cause notice and final show cause notice and ultimately dismissed from the service. He challenged the final order of dismissal before this Tribunal and his appeal was dismissed on 14.11.2003. That judgment had attended the finality.

The record shows that Anti-Corruption case was also registered against the appellant for misappropriation of the stock in which he got acquittal on 30.01.2015. After that he started new round and moved the departmental authorities for his reinstatement which representation/appeal was turned down and his appeal against that order was rejected vide order dated 25.08.2017, after that he has filed present appeal claiming that the copy of the order was communicated to the appellant only on 24.04.2019.

Heard the appellant's learned advocate. He states that as the order was communicated to the appellant on 24.04.2019 therefore present appeal filed on 22.05.2019 is within time. He further contends that acquittal of the appellant gives him new cause of action for approaching the departmental authorities. His contention is grossly misconceived. The case in respect of multiple allegations which include the allegations other than what were before the Anti Corruption Court also. The decision recorded by the Tribunal already cannot be re-opened on the ground that the appellant had been acquitted from the charges of misappropriation. The appeal merits no consideration and is dismissed in limine."

3. The record shows that in the Anti-Corruption case he was acquitted from the charge of misappropriation of the stock vide order dated 30.01.2015 passed by the learned trial Court. After that, he moved the departmental authorities for his reinstatement which representation/appeal was turned down and his appeal against that order was rejected vide orders dated 25.08.2017, 8.10.2020, and 3.4.2021. The petitioner being aggrieved by and dissatisfied with the aforesaid decisions of the department has filed the instant petition, *inter-alia*, on the ground that the petitioner has a long service record with the respondents and the punishment awarded to him was disproportionate to the gravity of the offense when he already acquitted from the charges leveled against him by the competent court of law. An excerpt of the appellate

order dated 13th April 2021 issued by the Services General Administration and Coordination Department, Government of Sindh, is reproduced as under:

“ORDER

WHEREAS, The appellant Mr. Muhammad Usman Mari, Ex-Sub Sales Inspector, Defunct SASO, Agriculture, Supply & Prices Department, Government of Sindh had preferred Departmental Appeal against his dismissal from service vide order No.DDAS/SASO/1546-53/99 dated 04.03.1999 passed by the Deputy Director Agriculture, SASO Mirpurkhas Division and in the light of judgment passed by the Special Judge, Anticorruption (Provincial) Hyderabad @ Camp Mirpurkhas dated 30.01.2015.

WHEREAS, Mr. Muhammad Usman Mari, Ex-Sub-Sale Inspector (SSI) (BS-09) SASO, while posted as Incharge of SASO SBD Kunri, District Umerkot was found involved in unlawful practices of mixing/adulteration of stocks and miss-appropriation of fertilizer stocks amounting to Rs. 24,58,646/-. Resultantly, two enquiries committees conducted against him at departmental level and in light of the report of such enquiry committees, he was imposed major penalty of dismissal from service under E&D Rules, 1973 vide Order dated 04.03.1999 and his case was referred to the Anticorruption Mirpurkhas and he was proceeded under Special Case No.135/1999 and finally he was acquitted vide judgment dated 30.01.2015.

NOW THEREFORE, after detailed examination of the record, considering the report of Administrative Department as well as advice of Law Department and hearing both the parties i.e. appellant (Mr. Muhammad Usman Mari) and respondent (representative of Agriculture, Supply & Prices Department, Government of Sindh) on 26-03-2021. ***I, MUMTAZ ALI SHAH, Chief Secretary Sindh/Appellate Authority in exercise of the powers conferred upon me under Rule 3(i) of the Sindh Civil Servants (Appeal) Rules, 1980, am satisfied to reject the departmental appeal of the appellant.***”

4. We have heard the learned counsel for the parties and have gone through the record with their assistance.

5. There is no cavil to the proposition that departmental proceedings and criminal prosecution are not mutually exclusive, can be proceeded independently and acquittal in criminal proceedings does not affect the outcome of the departmental proceedings. It may be noted that departmental proceedings are undertaken under a different set of laws, are subject to different procedural requirements are based upon different evidentiary principles and a different threshold of proof is to be met. Criminal proceedings on the other hand are undertaken under a different set of laws, have different standards of proof are subject to different procedural requirements, and different thresholds of proof are required to be met. Therefore, acquittal in criminal proceedings cannot and does not automatically knock off the outcome of the departmental proceedings if all legal and procedural formalities and due process have been followed independently. On the aforesaid proposition, we are fortified with the decision of the Honorable Supreme Court in the case of *Province of Punjab Vs. Khadim Hussain Abbasi and others* **2021 SCMR 1419.**

6. Since the defunct SASO employees were not civil servants, therefore, this court has jurisdiction to look into the vires of the impugned orders of the respondent department and appellate authority under Article 199 of the Constitution.

7. We have noticed that the inquiry proceedings were conducted under the Sindh Civil Servants (Efficiency and Discipline) Rules, 1973 as adopted by SASO, 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 aforesaid Rules-1973 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 defense.

8. 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. In such circumstances, in our view, the petitioner was entitled to a fair opportunity to clear his position in terms of the principle of natural justice. On the aforesaid proposition of law, we are fortified with the decisions 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), *Muhammad Sharif Abbasi vs. Member, Water, WAPDA Lahore* (2013 SCMR 903), and *Lahore Development Authority vs. Muhammad Nadeem Kachloo* (2006 SCMR 434).

9. So far as the charges leveled against the petitioner vide office order dated 04.03.1999 that petitioner misappropriated/adulterated SASO stocks with the connivance of Abdul Qudoos Chowkidar has been belied by the judgment of the learned trial Court in Special Case No.135/1999 and the statements of the witnesses of the respondent department were recorded on oath and this was the reason the petitioner was acquitted from the charges, however, since the Criminal Case has no bearing in the departmental proceedings, therefore, we are not inclined to dilate upon the subject issue furthermore in the light of judgment passed by the Hon'ble Supreme Court of Pakistan as discussed supra. However, we are cognizant of the fact that the petitioner was appointed in 1978 and was dismissed from service in 1999 has 21 years' service in his credit, which is sufficient for conversion of his major penalty of dismissal from service into compulsory retirement for the reason that petitioner was dismissed from service with the stigma of alleged misappropriation and adulteration of SASO stock at the relevant time and the respondent department did not confront him with the relevant record and report of competent authority about misappropriation/adulteration of SASO stock, if any, and even he was not allowed to produce witnesses and cross-examined the witnesses of the respondent department on the purported allegations leveled against him. Prima facie, the punishment awarded to him through the impugned office order dated 04.3.1999 is harsh, therefore, we deem it appropriate in the best interest of justice to convert the aforesaid punishment into the major penalty of compulsory retirement from service in line with the Sindh Civil Servants (E&D) Rules, 1973.

10. In view of the above facts and circumstances of the case, the impugned orders dated 25.08.2017, 8.10.2020, and 13.4.2021 are set aside. Consequently, the original order dated 04.03.1999 regarding the dismissal of the petitioner is also set aside, in terms of findings recorded in the preceding paragraph.

11. The petition stands disposed of in the above terms.

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