

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Aziz-ur-Rehman

Mr. Justice Adnan-ul-Karim Memon

C.P No. D- 745 of 2015

Ghulam Hussain Iqbalani (Deceased)
through his legal heirs & 2 othersPetitioners

V e r s u s

The Federation of Pakistan & othersRespondents

Dates of Hearing: 17.04.2019, 08.05.2019, 16.05.2019
& 24.05.2019

Date of Decision: 29.05.2019

Mr. Abdul Salam Memon, Advocate for the Petitioners.

Mr. Muhammad Faheem Akhtar, Advocate for the
Respondents No.2 & 3.

Mr. Muhammad Nishat Warsi, DAG.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:- Through the instant Petition, the Petitioners No.01 & 02, namely Ghulam Hussain Iqbalani and Abdul Ghaffar Pathan, respectively, have sought direction to the Respondents for grant of pensionary benefits; whereas the Petitioner No.3, Muhammad Hassan Khan has sought reinstatement in service. All the Petitioners have built up their case on the basis of Judgment dated 28th May, 2014 passed by the learned trial Court of Special Judge (Central) II Karachi, whereby they were tried and acquitted from the charges leveled against them by the prosecution/Respondent-SUPARCO.

2. Brief facts of the case, as per averments of the parties, are that the Petitioners were appointed in Pakistan Space & Upper Atmosphere Research Commission [**SUPARCO**] as Assistant, Junior Assistant and Driver in year 1978, 1982 and 1990. The Petitioners have averred that on account of alleged fraud made in

the Finance Division of SUPARCO, they were suspected for the aforesaid loss caused to the Government exchequer and their services were placed under suspension and they were served with the charge sheets on 23.10.1995 & 22.11.1995. Per Petitioners, they denied the allegations leveled against them. However, Show Cause Notices dated 27.09.1997 were served upon them and finally they were dismissed from service vide orders dated 06.11.1997. They preferred Departmental Appeals before the competent authority against the impugned Dismissal order; but their Appeals were rejected by the competent authority vide order dated 04.06.1998. Petitioners Ghulam Hussain and Muhammad Hassan Khan, being aggrieved by and dissatisfied with the Original and Appellate orders, preferred Service Appeals No.970 & 971(K) of 1999, before the learned Federal Services Tribunal (FST), which were dismissed in limine, being bared by limitation vide common Judgment dated 04.2.2000. The Petitioners have averred that in the meanwhile the Respondents filed the Criminal Complaint to the FIA and lodged FIR No.12/1998 against them. The FIA conducted investigation and charge sheet was submitted against them before the learned Special Judge (Central) II Karachi. The learned trial Court concluded the trial and finally acquitted the Petitioners from the allegations vide Judgment dated 28th May, 2017. The Petitioners have submitted that after their acquittal in the aforesaid Criminal case, they filed representation / Appeal dated 14th July, 2014 before the competent authority; but unfortunately the same was rejected vide impugned letter dated 9th September, 2014. The Petitioners, being aggrieved by and dissatisfied with the aforesaid Departmental decisions on the Respondents representation, have filed the instant Petition on 11.2.2015.

3. During pendency of the proceedings, the Petitioners No.1 & 2 had attained the age of superannuation i.e. 60 years; but the Petitioner No. 01 passed away on 02.09.2017 and in pursuance of the order dated 25.10.2017 passed by this Court, amended title was filed by his Legal Heirs on 28.10.2017.

4. Mr. Abdul Salam Memon, learned Counsel for the Petitioners argued that the acts of Respondents to reject the representations/appeals of the Petitioners No. 01 and 02 for retirement benefits and reinstatement of the Petitioner No. 03 in service after the Judgment dated 28th May, 2014 passed by the learned trial Court are illegal, un constitutional, without lawful authority and arbitrary; that the Respondents issued the charge sheet against the Petitioners for committing fraud and then after conducting inquiry by the Committee, the Petitioners were dismissed from service with malafide intention; that on the complaint of the Respondents, FIA registered FIR No.12/1998 against the Petitioners and initiated inquiry; that the Respondents had failed to provide any incriminating material before the learned trial Court to prove the allegations against the Petitioners, consequently the Petitioners were acquitted from the criminal case; that the Petitioners have not committed any fraud which is evident from the judgment of the learned trial Court. In support of his contention, he relied upon the cases of RASHID MEHMOOD---Appellant v. ADDITIONAL INSPECTOR-GENERAL OF POLICE and 2 others---Respondents [2002 SCMR 57], THE SECRETARY, GOVERNMENT OF THE PUNJAB, through Secretary, Health Department, Lahore and others---Petitioners v. RIAZ-UL-HAQ---Respondent [1997 SCMR 1552], PROVINCE OF THE PUNJAB---Appellant v. ABDUL AZIZ QURESHI---Respondent [1994 SCMR 247], SUPERINTENDING ENGINEER GEPCO, SIALKOT---Petitioner v. MUHAMMAD YOUSAF---Respondent

[**2007 S C M R 537**], Malik AZHARUL HAQ—Appellant v. DIRECTOR OF FOOD, PUNJAB, LAHORE and another—Respondents [**1991 S C M R 209**] and MUHAMMAD AZRAM v. NATIONAL INSTITUTE OF HEALTH and others [**2015 P L C (C.S.) 537**]. He lastly prayed for allowing the instant Petition.

5. Conversely, Mr. Muhammad Faheem Akhtar, learned Counsel for the Respondents No.2 & 3 has raised the question of maintainability of the instant Petition and argued that the Petitioners were dismissed from service on account of misconduct and their Service Appeals were also dismissed by the learned FST which attained finality, therefore, they cannot file Constitutional Petition on the same grounds; that merely acquittal in criminal case does not debar the Respondent-Department to conduct departmental proceedings. In support of his contention, he relied upon the cases of Muhammad Ayub vs. The Chairman Electricity Board, WAPDA, Peshawar [**PLD 1975 Lah. 89**], State through Prosecutor-General, Punjab vs. Jahangir Akhtar [**2018 PLC (C.S) 577**], Mir Nawaz Khan vs. Federatl Government [**1996 S C M R R 315**], Muhammad Ashraf Khan vs. Director, Good, Punjab, Lahore and another [**2004 PLC (C.S) 1366**], Syed Muhammad Iqbal Jafri vs. Registrar, Lahore High Court, Lahore [**2004 PLC (C.S) 809**], Attaullah Brohi vs. Sindh Agricultural Supplies Organization and 3 others [**2004 PLC (C.S) 1300**], Khaliq Dad vs. Inspector General of Police and 2 others [**2004 PLC (S.C) 198**], Muhammad Naveed vs. Superintendent of Police, Saddar Division, Lahore and others [**2004 PLC (C.S) 563**], Riasat Ali vs. Principal, Government Technical Training Center Sahiwal and another [**2004 PLC (C.S) 413**], Sami ullah vs. Inspector General of Police and others [**2006 PLC (C.S) 449**], Government of Pakistan through Secretary M/o Finance and others vs. Asif Ali and others [**2007 PLC (C.S) 271**], Nazir Ahmed vs. Capital City Police Officer, Lahore [**2011 S C M R 484**], Irshad

Muhammad Shah vs. HESCO and another [2012 PLC (C.S) 939], Saddar ud Din vs. Government of Balochistan and another [2012 PLC (C.S) 627], Muhammad Azram vs. National Institute of Health and others [2015 PLC (C.S) 537] & Akbar Khan vs. Federation of Pakistan and others [2002 SCMR 684]. He lastly prayed for dismissal of the instant Petition.

6. Mr. Muhammad Nishat Warsi, learned DAG has adopted the arguments of the learned Counsel representing the Respondents No.2 and 3.

7. We have heard the parties at length and perused the material available on record and case law cited at the bar.

8. In the first instance, we address the question of maintainability of instant Petition under Article 199 of the Constitution. Admittedly, the Petitioners No. 1 and 3 filed Service Appeals No.970 & 971(K) of 1999, before the learned Federal Service Tribunal and their respective Appeals were dismissed vide common Judgment dated 04.2.2000 in the following terms:-

“6. One can very easily conclude on plain reading of the provisions of section 4 of the Act, reproduced above, that the aggrieved employee like the appellants were legally required to file service appeals before the Tribunal against the impugned order within 30 days from receipt of rejection letter of departmental appeal. Admittedly per Memo of appeal the appellant, Muhammad Hasan Khan, on receipt of rejection letter earlier than 16.6.1998, had preferred second appeal on 16.6.1998 in place of approaching the Service Tribunal with the service appeal within the prescribed period while appellant, Ghulam Hussain, did not care for receiving the rejection letter to file any service appeal and after lapse of more than 14 months’ time and filed his service appeal along-with appellant, Muhammad Hasan Khan, on 20.9.1999 alleging that he received the letter of rejection of his appeal after 14 months on 17.8.99. We doubt, in the circumstances of the case, the unconvincing plea of appellant, Ghulam Hussain, that he received rejection letter in the office of respondent after expiry of 14 months which was sent to the appellant’s home address as is evident from the rejection letter. He has produced no document in support of his plea/stand. If we, for argument sake, take it for granted that the letter of rejection/order of rejection of appeal sent to the appellant by post at his recorded address did not reach him even then, in view of an admitted position to the effect that he (Ghulam Hussain) received rejection letter from respondent’s office on 17.8.1999, the instant appeal before the Tribunal on 20.9.1999 is incompetent and not maintainable being filed after expiry of prescribed limitation period of 30 days.

7. Per well settled law legal grounds and sufficient explanation for condonation of delay of even one is required to make the service appeal competent for adjudication before Service Tribunal (1990 SCMR 1519).

8. In view of the admitted facts and legal position discussed above, we have no hesitation to hold that both the appeals are time barred and not maintainable under law per well settled law of 1986 SCMR 30, 1988 SCMR 1354 and 1998 PLC (CS) 800.

9. We accordingly dismiss both the appeals in limine as incompetent and not maintainable under law being time barred.”

9. We have also noticed that the colleague of the Petitioners namely Ikramuddin Qureshi, who was charged with the Petitioners for the same allegations, preferred Service Appeal No.1031 (K)/1998 before the learned FST (available at Page-117 to 133 of second part of the Court’s file). The learned FST vide judgment dated 07.11.2003 dismissed his Service Appeal with the following observations:-

“7. In the final analysis, arrived by the inquiry committee, it has been recommended in para-12 of the recommendations as under:-

12. Strict disciplinary action should be taken against Mr. Muhammad Rehan, Assistant (Cash Branch) and Mr. Talha Jamal, Jr. Asstt (Audit Branch) for their criminal involvement in this case of fraudulent vouchers in collusion with co-accused Mr. Ikramuddin Qureshi, Supdt. (Audit) and others.

In the same inquiry report at page-26 of the recommendations, it has been advised to refer the case of the Appellant along with other employees to the F.I.A as a result of their criminal involvement in the case of fraudulent preparation of vouchers with this incriminating material available with the respondents against the Appellant the learned Counsel for the Respondents has relied upon 1983 PLC (C.S) 453 and NLR 1996 (Service) 123 as well as General Financial Rules and instructions in respect of Audit of Vouchers, contained in para-8 and 86 of the Audit Manual.

8. We have considered the arguments, advanced on behalf of the Appellant as well as on behalf of the respondents. **We have also perused the appeal file, inquiry report, inquiry proceedings and other relevant documents, produced by the parties including the relevant law. The Appellant has failed to bring out a plausible case in his favour so as to persuade us to reject all the material, which has been collected against him in shape of documentary evidence as well as other verbal statements of witnesses. We do not find any force in the argument that the Appellant has been materially prejudiced during the course of disciplinary proceedings. On the contrary, the guilt and involvement of the accused officer has been proved through documents to the extent that the accused is proved to have passed pay orders in his capacity as Accounts Officer (Audit) in respect of as many as 18 vouchers, which amounted to Rs.303100/- Apart from this amount, there are proven allegations that an amount of Rs.787350/- was fraudulently taken away by the Appellant through clearing 35 fraudulent vouchers/payment and payment thereof. The details of all such amounts are given in the charge sheet. There is no ground, nor any plausible explanation, given on behalf of the Appellant to disagree with the conclusions of the inquiry committee.**

9. On the point of discrimination, having been raised on behalf of the Appellant that the Appellant has been singled out for dismissal, **it will be pertinent to point out that the other co-accused Ghulam Muhammad and Hassan Khan were also dismissed from service and whose appeals were rejected by this Tribunal, having been found as time-barred. In this respect, the learned Counsel for the Respondents has relied upon NLR 1996 (Service) 123 also.**

10. Thus, in view of the entire above discussion along with the attending circumstances of this appeal, **we do not find any cogent reason to disagree with the findings of the inquiry committee and we also do not find that any material injustice has been done while conducting disciplinary proceedings against the Appellant. As such, the appeal of the Appellant fails and hence; while maintaining the impugned order of dismissal from service dated 06.11.1993, the appeal of the Appellant is dismissed.**

11. The cost of the appeal may be borne by the respective parties and the copy of Judgment be forwarded to all the concerned parties forthwith.” **(Emphasis Added).**

10. Upon query by this Court as to how the instant Petition is maintainable against the common Judgment dated 04.2.2000 passed by the learned Federal Service Tribunal at Karachi in Service Appeal No.970 & 971(K) of 1999 as the Petitioners No.1 and 3 have failed to file Civil Petitions for grant of leave to Appeal before the Hon'ble Supreme Court of Pakistan against the Judgment dated 04.2.2000 passed by the learned Federal Service Tribunal as provided under Article 212 (3) of the Constitution of the Islamic Republic of Pakistan, 1973.

11. Mr. Abdul Salam Memon, learned Counsel for the Petitioners replied that effect of dismissal of the Petitioners from service after they were acquitted of criminal charge is very obvious that the charges leveled against the Petitioners were washed away; that on acquittal of the Petitioners from the criminal charge by competent Court, the very basis for their discharge from service was washed away as it was solely founded on the criminal charge. He emphasized that when no facts were established in the course of the trial to justify action taken in disregard of departmental rules; the decision of the trial Court on the facts ought to have been accepted and no departmental action was required to be taken; that the order of dismissal of the Petitioners from service was based on misconduct, and the basis of which had been discarded by the competent Court of law, then the departmental action against the Petitioners on that basis was not sustainable in law. However, he pointed out that the departmental authority failed to

conduct any regular inquiry against the Petitioners, and it had, therefore, no basis to hold the Petitioners guilty of misconduct. The learned Counsel for the Petitioners further contended that question for consideration is as to whether the Petitioners were honorably acquitted, because according to him the learned trial Court while accepting their case extended them benefit of doubt and their acquittal is/was honorable acquittal. Having explained his case, he lastly submitted that the decision of the learned FST was not based on merits of the case, but on the point of limitation; therefore, that decision should not come in the way of the Petitioners on the ground that subsequent favorable decision came in their favour; therefore, the question of approaching the Honorable Supreme Court did not arise.

12. Be that as it may, we are cognizant of the fact that this Court cannot entertain the grievance of the Petitioners under Article 199 of the Constitution, in view of the bar contained under Article 212 (3) of the Constitution, which ousts the jurisdiction of this Court. The ouster clause under Article 212 (3) of the Constitution is a Constitutional command, which restricts the jurisdiction of this Court on the subject, which squarely falls within the exclusive domain of the Hon'ble Supreme Court of Pakistan, being the Appellate Court in respect of the decisions of Service Tribunals. We are fortified on this point by the decision of the Hon'ble Supreme Court in the case of Ali Azhar Khan Balouch and others v. Province of Sindh and others [2015 SCMR 456]. Therefore, the forum chosen by the Petitioners for invoking the Constitutional Jurisdiction of this Court under Article 199 of the Constitution is not proper under the law.

13. Upon perusal of the record, it appears that the Petitioners were dismissed from service on the charge of misconduct on the

ground of misappropriation of Government money to the tune of Rs.1½ crore and disciplinary proceedings were conducted against them and they were found guilty in the regular inquiry proceedings [available at pages 18 to 46 of the second part of the Court file] and were dismissed from service in the year 1997. The Petitioners No.1 and 3 approached the learned FST, which too dismissed their Service Appeals on 4.2.2000.

14. Record does not reflect that the Petitioners No.1 and 2 assailed the aforesaid Judgment before the Hon'ble Supreme Court. We have noticed that departmental action against the Petitioners having been initiated independently of a criminal case registered against them. Merely obtaining acquittal order in criminal case would not nullify the outcome of the departmental proceedings and on this score the dismissal order cannot be set aside. The plea taken by the Petitioners had already been considered by the Judgment of the learned FST in the aforesaid matters, which attained finality, even we have been informed that the Appellant Mr. Ikramuddin Qureshi, Superintendent, Finance was also charged with the similar allegations and was dismissed from service and his Service Appeal was dismissed by the learned FST on merits; therefore, at this juncture no case for interference is made out against the dismissal from service of the Petitioners, for the simple reason that aforesaid decision of the department was merged in the order of learned FST and the Petitioners had the remedy against the aforesaid judgment of the learned FST under the law, therefore, for the same cause of action the Petitioners No.1 & 3 cannot assail the findings of learned FST in Constitutional Petition before this Court under Article 199 of the Constitution as the case of the aforesaid Petitioners clearly falls within the ambit of constructive res judicata.

15. Adverting to the main contention of the Petitioners regarding acquittal from the criminal case and entitlement of the Petitioners for pensionary benefits and reinstatement in service, we observe that the disciplinary proceedings and criminal proceedings are altogether different and independent of each other and cannot be termed as synonymous and interchangeable. The forums for adjudication, principles of evidence and procedure are also separate and distinct. The decision of one forum cannot have bearing on the decision of the other forum. In our view, a person convicted or acquitted in a criminal trial cannot influence the disciplinary proceedings. We are fortified in our view by the decisions rendered by the Hon'ble Supreme Court in the cases of Mir Nawaz Khan vs. Federal Government and 2 others [**1996 SCMR 314**], 'Arif Ghafoor v. Managing Director, H.M.C. Taxila and others' (**PLD 2002 SC 13**), 'Muhammad Iqbal v. District Police Officer, Sahiwal and another (**2011 SCMR 534**), 'Executive Engineer and others v. Zahid Sharif' (**2005 PLC (C.S.) 701**), 'Falak Sher v. Inspector General of Police, Punjab and 2 others' (**2005 SCMR 1020**), 'Rab Nawaz Hingoro v. Government of Sindh and others' (**2008 PLC (C.S.) 229**), 'Nazir Ahmed v. Capital City Police Officer, Lahore and another' (**2011 SCMR 484**), 'Syed Muhammad Iqbal Jafri v. Registrar, Lahore High Court Lahore' (**2004 SCMR 540**); 'Khaliq Dad v. Inspector General of Police and 2 others' (**2004 SCMR 192**) & 'Muhammad Ayub v. The Chairman Electricity Board WAPDA, Peshawar and another' (**PLD 1987 SC 195**).

16. The second contention of the Petitioners was that the decision of the learned FST was not on merits, therefore at this juncture, this court can interfere under Article 199 of the Constitution. We do not agree with the aforesaid assertion of the learned Counsel on the premise that limitation is a part of positive law, which has to be construed and applied as per the settled

principles, which are provided in numerous dicta of the Honorable Supreme Court; it has to be given due effect as per the mandate of law, therefore it is held that “limitation is not a mere technicality of form”. Our view, on the aforesaid proposition, is supported by the decision rendered by the Honorable Supreme Court of Pakistan in the case of Ghulam Qadir & others v. Shah Abdul Wadood & others passed in **Civil Appeals No.510, 934/2012, 1247/2014 & 509/2006** vide judgment dated 08.6.2016.

17. The case law cited by the learned Counsel for the Petitioners are distinguishable from the facts of the case in hand.

18. In view of the foregoing position, without touching the merits of the case, the captioned Constitutional Petition is found to be devoid of jurisdictional error and is accordingly dismissed along with the listed Application[s]. The Petitioners, however, may avail appropriate remedy if available to them under the law.

JUDGE

JUDGE

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