

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Junaid Ghaffar, J.
Agha Faisal, J.

C P D 1111 of 2022 : Shabbir Akram vs.
National Industrial Relations Commission
& Others

For the Petitioner : Mr. Abdul Rauf, Advocate

For the Respondents : Mr. Ayan Mustafa Memon, Advocate

Date/s of hearing : 21.11.2022

Date of announcement : 21.11.2022

ORDER

Agha Faisal, J. Briefly stated, the petitioner was found culpable of corruption / receiving illegal gratification, post conclusion of exhaustive disciplinary proceedings and consequently dismissed from service. In appeal, the learned Member NIRC¹ observed that while the guilt / culpability of the petitioner was not in any doubt, however, the punishment ought to have been slighter, hence, reinstated the petitioner without the full back benefits. The petitioner appealed the decision but only with respect to the issue of back benefits; while the respondent assailed the findings of the learned Member NIRC in their entirety. Vide order dated 21.12.2021 (“Impugned Order”), the appeal of the respondent was allowed by the Full Bench NIRC and the dismissal of the petitioner was maintained, hence, this petition.

2. Petitioner’s counsel admitted that the maintaining of the guilty verdict there against, by the Member NIRC, was never challenged; however, he sought to agitate that the restoration of the original penalty ought not to have been undertaken. Respondent’s counsel submitted that the culpability of the petitioner was admittedly beyond doubt and the learned Full Bench NIRC had rightly restored the original penalty awarded.

3. Heard and perused. It is clear before us that the petitioner had never assailed the finding of guilt, maintained against him by the Member NIRC, in his appeal before the Full Bench NIRC. Therefore, the issue to be considered by

¹ Vide order dated 08.04.2021.

us was whether the learned Full Bench NIRC had rightly maintained the original dismissal order, while setting aside the order of the Member NIRC.

4. The honorable Supreme Court has maintained² that findings of culpability in respect of illegal gratification / corruption constitute a grave offence, requiring imposition of major penalty. It is considered appropriate to reproduce the illuminating observations of the august Court herein below:

“In our view, taking of illegal gratification itself is a heinous offence, requiring imposition of major penalty. The decision of Member-I of the Punjab Service Tribunal considering it a minor act and imposing a minor penalty through his impugned judgment shows that the said Member is neither sensitive nor alive to the offence of taking illegal gratification, which by law is considered serious misconduct. This Court has time and again held that accepting illegal gratification is a heinous offence and a civil servant, who is found guilty of this offence, cannot be retained in the civil service and major penalty has to be imposed on him. Reference in this regard may usefully be made to *Bashir Ahmad, Line Superintendent-I Lahore vs. Water and Power Development Authority, through its Chairman, Lahore* (1991 SCMR 2093), *Muhammad Inam vs. Federal Service Tribunal* (1995 SCMR 37), *Javed Akhtar vs. WAPDA through Chairman, WAPDA House, Lahore and 2 others* (1996 SCMR 867), *Ali Akbar vs. Inspector-General of Police* (2001 SCMR 83), *Safdar Ali vs. D.I.G. Traffic, Lahore and others* (2007 PLC (C.S.) 1284), *Ghulam Rasool Ranjha vs. Government of the Punjab through Chief Secretary, Province of Punjab, Lahore and others* (2008 SCMR 1265) and *Muhammad Shehzad Zaheer vs. Federation of Pakistan through Secretary Establishment Division and others* (2014 SCMR 1169).”

The aforesaid guidance was reiterated by the august Court in a subsequent pronouncement, being the *Zafarullah case*³, while also placing reliance upon the earlier *Afzal case*⁴. In view of the dicta illumined by the august Court, it is apparent that no case for reduction of penalty, while maintaining culpability in the circumstances under consideration, is made out.

5. It is imperative to consider that Article 199 of the Constitution contemplates the discretionary⁵ writ jurisdiction of this Court and the said discretion may be exercised in the absence of an adequate remedy. In the present matter *admittedly* there existed an adequate remedy, however, the same was duly availed / exhausted. It is gleaned from the Impugned Order that the petitioner had remained unable to rebut the preponderance of record / evidence relied upon by the NIRC and furthermore the petitioner's counsel remained unable to articulate before us today as to why the impugned findings of the NIRC could not be rested on the law / record relied upon.

6. The ambit of constitutional petition is not that of yet another forum of appeal and is restricted *inter alia* to appreciate whether any manifest illegality is

² Per *Ijaz ul Ahsan J.* in the yet unreported judgment dated 30.07.2020 in *District Police Officer Mianwali & Another vs. Muhammad Hanif (Civil Appeal 324 of 2020)*.

³ Per *Ijaz ul Ahsan J.* in the yet unreported judgment dated 10.11.2020 in *Divisional Superintendent Postal Services Faisalabad & Others vs. Muhammad Zafarullah (Civil Appeal 420 of 2020)*.

⁴ Per *Ijaz ul Ahsan J.* in *Chief Postmaster Faisalabad GPO & Another vs. Muhammad Afzal* reported as 2020 SCMR 1029.

⁵ Per *Ijaz Ul Ahsan J.* in *Syed Iqbal Hussain Shah Gillani vs. PBC & Others* reported as 2021 SCMR 425; *Muhammad Fiaz Khan vs. Ajmer Khan & Another* reported as 2010 SCMR 105.

apparent from the order impugned. It is trite law⁶ that where the fora had exercised its discretion in one way and that the discretion had been judicially exercised on sound principles, interference in such discretion would not be merited unless the same was contrary to law or usage having the force of law. It is the considered view of this court that no manifest illegality has been identified in the orders impugned and further that no defect has been pointed out in so far as the exercise of jurisdiction is concerned.

7. In view hereof, we are constrained to observe that no case has been set forth to entertain this matter in the writ jurisdiction of this Court, hence, this petition, along with pending application/s, was dismissed vide our short order announced in Court earlier today upon conclusion of the hearing. These are the reasons for our short order.

JUDGE

JUDGE

⁶ Per *Faqir Muhammad Khokhar J.* in *Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as *PLD 2006 Supreme Court 1124*; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as *PLD 2013 Supreme Court 323*.