

IN THE HIGH COURT OF SINDH AT KARACHI

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

C P D 973 of 2022 : Qamar Ali vs.
Federation of Pakistan & Others

For the Petitioner : Mr. Rafiq Ahmed Kalwar, Advocate
Mr. Muhammad Yasir, Advocate

For the Respondents : Mr. Chaudhry Azhar Elahi, Advocate
Mr. Gul Hassan Abbasi, Advocate

Mr. Syed Yasir Ahmed Shah
Assistant Attorney General

Date/s of hearing : 16.09.2022

Date of announcement : 16.09.2022

ORDER

Agha Faisal, J. The pivotal question before us is whether a penalty of demotion to a lower pay scale, indefinite in nature, could be sustained.

2. Briefly stated, the petitioner, an employee of National Bank of Pakistan (“NBP”), was subjected to exhaustive disciplinary proceedings, found culpable¹ and awarded the penalty of being downgraded two pay scales. The appeal against the Original Order was also dismissed²; hence, this petition.

3. The respective orders were issued per the NBP Staff Service Rules 1973 (“Rules”), since rescinded, however, since they were in force at the relevant period of time, therefore, no cavil with respect to maintainability was articulated before us by the respondents’ counsel.

4. The charge³ against the petitioner *inter alia* was employment of abusive language against management at an unauthorized gathering of employees.

¹ Vide Order dated 13.02.2018 (“Original Order”).

² Vide Order dated 11.10.2021 (“Appellate Order”).

³ Dated 20.11.2017.

Petitioner's counsel had argued that the evidential burden had not been discharged, hence, the finding of culpability was unmerited. Reference was made to the tenability of video evidence and that of corroborating witnesses.

The respondents' counsel demonstrated from the reply⁴ filed by the petitioner that his presence at the event was virtually admitted and detailed justification was provided for employing the derogatory terms attributed thereto, therefore, the viability of video evidence was rather redundant.

5. We have observed that no cavil has been articulated by the petitioner's counsel with regard to the said disciplinary procedure being in consonance with the law in general and the Rules in particular. On the contrary we have seen that the petitioner has duly signed the statement showing that the proceedings were impartial; he was provided fair opportunity to defend his case; and that he was satisfied with the proceedings⁵. It is, thus, observed that no case of procedural impropriety has been set forth on behalf of the petitioner.

6. It is imperative to denote that the proceedings under scrutiny are domestic disciplinary proceedings, per the Rules, and not a criminal trial, hence, the petitioner's counsel's attempts to draw analogies to standards of evidence for trials under the Control of Narcotics Substances Act 1997 and the National Accountability Ordinance 1999 are futile. In so far as the appreciation of facts are concerned and the findings thereon of the respective fora, it is observed that no infirmity in such regard could be identified before us. Needless to mention that even otherwise we are exercising writ jurisdiction, and not appellate, wherein adjudication of disputed questions of fact, requiring detailed inquiry, appreciation of evidence etc., is unmerited⁶.

7. The pivotal question, meriting scrutiny in writ jurisdiction, that remains is whether upon finding of culpability the punishment of demotion could be awarded indefinitely. Per petitioner's counsel the same was unlawful; however, the comments filed by NBP took the plea that there was no embargo on such punishment per the Rules⁷.

⁴ Dated 12.01.2018.

⁵ Available at page 111 of the file.

⁶2016 CLC 1; 2015 PLC 45; 2015 CLD 257; 2011 SCMR 1990; 2001 SCMR 574; PLD 2001 Supreme Court 415;

⁷ Reference was made to Rule 36 of the Rules.

8. In the context of NBP itself, the august Supreme Court had taken notice of such punishment in *Naeem Khan*⁸. While the issue was considered by the Court, however, no conclusive findings in such regard were rendered since the respondent had already represented that the penalty imposed would be construed to be ring fenced to have effect for three years only.

In *Umer Morio*⁹, the Supreme Court held that such a penalty could only be time bound and not indefinite. It may also merit mention that *Umer Morio* was rendered in the context of civil servants and the petitioner does not fall in that category.

This leads us to the edict in *Aamer Hassan*¹⁰, wherein the Supreme Court considered the analogous provision in the Removal from Service (Special Powers) Ordinance 2000. *Pari materia* to the Rules, the Ordinance contained the provision for reduction to a lower post / pay scale as a penalty, however, the same was devoid of any constraints of time. *Syed Mansoor Ali Shah J* observed that it had been consistent practice of the Supreme Court to insist upon such penalties be time bound and proceeded to apply the same principle in the said circumstances¹¹.

9. In view of the binding nature of the judgments referred to supra, we are of the considered opinion that the award of demotion of pay scale for an indefinite period does not merit appreciation. While reiterating that no infirmity has been identified before us in so far as the appreciation of facts and findings thereon are concerned by the respective fora, we do not sustain the imposition of the penalty of demotion in pay scale, under the present facts and circumstances, for an indefinite period.

10. The path to the operative order herein is also illumined by the Supreme Court in *Umer Morio* and *Aamer Hassan*, wherein it was preferred that instead of remanding the matter back to the competent authority, the impugned order/s

⁸ Per *Ijaz ul Ahsan J* in *Muhammad Naeem Khan vs. President NBP* reported as 2021 SCMR 785. Relied upon by petitioner's counsel.

⁹ Per *Nazim Hussain Siddiqui CJ* in *Govt. of Pakistan vs. Muhammad Umer Morio* reported as 2005 SCMR 436.

¹⁰ Per *Syed Mansoor Ali Shah J* in *Mirza Aamer Hassan vs. CIT & Others* reported as 2005 SCMR 436.

¹¹ Reliance was placed upon *Muhammad Sadiq vs. Superintendent of Police & Others* reported as 2008 SCMR 1296; *Member (A.C.E. and S.T.) Federal Board of Revenue, Islamabad & Others vs. Muhammad Ashraf & Others* reported as 2008 SCMR 1165; *Secretary Kashmir Affairs and Northern Areas Division, Islamabad vs. Saeed Akhtar & Another* reported as PLD 2008 SC 392; *Government of Pakistan through Secretary, Establishment Division, Islamabad & Others vs. Muhammad Umer Morio* reported as 2005 SCMR 436; *Tanvir Ahmed vs. Chief Secretary, Government of Punjab, Lahore* reported as 2004 SCMR 647.

be modified to be ring fenced to a definitive time period, proportionate¹² to the lapse committed by the officer.

11. Therefore, the Original Order¹³ and the Appellate Order¹⁴ are hereby modified to specify that the penalty imposed shall be effective for a period of Twelve months from the date¹⁵ of the Original Order. The respondent NBP is directed to actualize the modification undertaken herein and fix the service record of the petitioner accordingly.

12. This petition, along with pending application, is disposed of in terms herein contained.

JUDGE

JUDGE

¹² *Sabir Iqbal vs. Cantonment Board, Peshawar through Executive Officer & Others* reported as *PLD 2019 SC 189*; *Secretary to Government of the Punjab Food Department, Lahore & Another vs. Javed Iqbal & Others* reported as *2016 SCMR 1120*; *Muhammad Ali S. Bukhari vs. Federation of Pakistan through Establishment Secretary, Islamabad & Others* reported as *2008 SCMR 214*.

¹³ Order dated 13.02.2018.

¹⁴ Order dated 11.10.2021

¹⁵ 13.02.2018.