

Judgment Sheet
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.9906 of 2011.

(General Manager LTR (South), PTCL etc.
Versus
Mumtaz Ali Mufti etc.)

J U D G M E N T

Date of hearing: 17.03.2017.

Petitioners by: Mirza Amir Baig, Advocate for the
petitioners.

Respondents by: Syed Fazal Mehmood, Advocate for
respondent No.1.

Shujaat Ali Khan, J: - Briefly put, Mumtaz Ali Mufti (respondent No.1) while serving as E.S.P. (BS-16) was proceeded against under the Government Servants (Efficiency & Discipline) Rules, 1973 (hereinafter to be referred as the Rules 1973) on the allegation of misappropriation of valuable items of exchange. Upon conclusion of proceedings he was dismissed from service *vide* order, dated 16.08.2000, against which he filed an appeal which was accepted by the Member (Admn) and penalty of dismissal from service was converted into compulsory retirement. Being dissatisfied with the order

passed by the appellate authority, respondent No.1 filed an appeal (No.38 (L)/2002-CS) before the Federal Service Tribunal (FST), Lahore which stood abated, on 27.06.2006. Thereafter, he filed a Grievance Petition before Punjab Labour Court No.1, Lahore (respondent No.3) which was accepted through judgment, dated 03.12.2008, and respondent No.1 was directed to be reinstated in service. Against findings of respondent No.3 the petitioners (departmental authorities) filed an appeal before the Punjab Labour Appellate Tribunal, Lahore (respondent No.2) which was dismissed through judgment, dated 11.02.2011; hence this petition.

2. Learned counsel for the petitioner submits that as the employer was not served with requisite Grievance Notice the Grievance Petition filed by respondent No.1, which otherwise was hopelessly time barred, was not maintainable; that even before FST the appeal filed by the petitioner was time-barred, thus, the subsequent proceedings could not be held within time and that as respondent No.1 stood superannuated before filing of Grievance Petition before respondent No.3 findings regarding his reinstatement were a nullity in the eye of law.

3. Conversely, learned counsel representing respondent No.1 submits that as major penalty cannot be imposed against

any government servant without holding regular inquiry both the courts below have committed no illegality while setting aside the order passed by the competent as well as the appellate authority; that according to the notice issued to respondent No.1 by the Registrar FST he could approach relevant forum within 90 days, thus, there was neither any necessity of serving Grievance Notice on the employer nor the limitation provided for a person, who directly approaches Labour Court was applicable; that besides departmental proceedings, criminal proceedings were also initiated against respondent No.1 wherein he has been given clean chit; that as the matter was open before respondent No.2 in the shape of appeal filed by the department, it had committed no illegality while modifying the findings of respondent No.3; that respondent No.1 proved that he was a workman on the dint of duties being performed by him, thus, his petition before respondent No.3 was maintainable and that a perusal of the revised Pay Certificate issued to respondent No.1 shows that he fell within the definition of workman. In support of his contentions learned counsel has relied upon the cases reported as Qaisar v. Muhammad Shafqat Sharif (2012 SCMR 743), Ejaz Ali Bughti v. PTCL and others (2011 SCMR 333), Pakistan Telecommunication Co. Ltd. through Chairman v. Iqbal Nasir (PLD 2011 SC 132), Chief

Election Commissioner of Pakistan v. Miss Nasreen Pervez (2009 SCMR 329), Enayat Sons (Pvt.) Ltd. v. Government of Pakistan through Secretary, Finance and others (2007 SCMR 969), Municipal Committee, Chakwal v. Ch. Fateh Khan and others (2006 SCMR 688), Muhammad Mubeen ul Salam and others v. Federation of Pakistan through Secretary, Ministry of Defence (PLD 2006 SC 602), Pakistan International Airlines Corporation v. Ms. Shaista Naheed (2004 SCMR 316), Abdul Qayyum v. D.G. Project Management Organization JS HQ Rawalpindi and 2 others (2003 SCMR 1110), Ali Asghar and 3 others v. Creators (Builders) and 3 others (2001 SCMR 279), Muhammad Siddiq Javaid Chaudhry v. Government of West Pakistan (PLD 1974 SC 393) and Ashraf Hussain v. Punjab Labour Appellate Tribunal, Lahore and others (2016 PLC 97).

4. Learned counsel for the petitioners, while exercising his right of rebuttal, submits that as no appeal was filed by respondent No.1 against findings of respondent No.3 no relief could be given to him by respondent No.2 and that even if the question of limitation was not raised before respondent No.3 it was bound to adjudge the same.

5. I have heard learned counsel for the parties at considerable length and have also gone through the documents

annexed with this petition as well as the case-law cited at the bar.

6. Admittedly, respondent No.1 was proceeded against under the Rules 1973 which being statutory in nature, he was debarred to approach Labour Court. Reliance in this regard is placed on the case reported as National Bank of Pakistan v. Punjab Labour Court No.5, Faisalabad and 2 others (1993 SCMR 672) wherein it has *inter-alia* observed as under:-

*“6.....In this view of the matter, the provisions of the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, hereinafter referred to as the Standing Orders Ordinance, were not available to respondent No.3 in view of proviso to sub section 1 of section 1 thereof, which lays down that “Provided that nothing in this ordinance shall apply to Industrial and Commercial Establishments carried on by or under the authority of the Federal or any Provincial Government, **where statutory rules of service, conduct or discipline are applicable to the workmen employed therein.**” (emphasis provided).*

7. The apex Court of the country in the case reported as Masood Ahmad Bhatti and others v. Federation of Pakistan and others (2012 SCMR 152) has *inter-alia* observed that transferred employees of Pakistan Telecommunication Company Limited can approach this Court while invoking the constitutional jurisdiction of this Court. Relevant portion of the said judgment reads as under: -

“18. Learned counsel for PTCL stressed certain provisions of section 36 of the Reorganization Act to contend that the employment rules applicable to the appellants could not be treated as statutory rules. In particular, he adverted to the proviso to section 36(1) ibid wherein it has been stipulated “that the Federal Government shall guarantee the existing terms and conditions of the service and rights including pensionary benefits” of employees who stood transferred from the Corporation to PTCL. It was submitted on behalf of PTCL that there would be no occasion or necessity for the Federal Government to provide a guarantee as aforesaid, if PTCL stood saddled with the liability of pensionary benefits and the terms and conditions of service of employees transferred to it. From this provision, learned counsel wanted us to infer by implication that PTCL was left free to deal with its employee regardless of any constraints specified in section 35 and 36 of the Reorganization Act. This contention has no force. The guarantee does not change the nature or status of PTCL as the principal obliging required under law to adhere to the protected terms and conditions of service of transferred employees such as the appellants. The only effect of the guarantee is to ensure that in the event PTCL becomes incapable of fulfilling its obligations as to pensionary or other benefits, for reasons such as bankruptcy etc., the employees do not suffer from such event of default. It is important, at this point, to draw a distinction between employees who stood transferred to PTCL by virtue of section 35 ibid and the Vesting Order, on the one hand and those employees, who joined PTCL after 1-1-1996. The protection under the Federal Government guarantee would not be available to the latter category whose terms and conditions of service would be contractual in nature and would, therefore, be non-statutory.”

8. Now reverting to merits of the case, as respondent No.1 crossed the age of superannuation prior to filing Grievance

Petition, respondent No.3 committed grave illegality while directing for his re-instatement.

9. The casual approach of respondent No.2 is manifest from the fact that though appeal was filed by the department, however, he gave findings in favour of respondent No.1. At the most it could dismiss the appeal filed by the department but could not favour respondent No.1.

10. There is no cavil with the proposition that in ordinary course no government servant can be awarded major penalty without holding regular inquiry but in exceptional circumstances the competent authority can pass penal order against government servant on the basis of proceedings conducted while dispensing with regular inquiry. It is not case of respondent No.1 that misappropriation did not happen rather his stance is that the same was committed by other person and not by him. So no exception can be taken against the order passed by the competent authority as well as the appellate authority on the ground that respondent No.1 was proceeded against without holding regular inquiry. Moreover, learned counsel for respondent No.1 failed to contradict the stance of the department that even under compulsory retirement

respondent No.1 was entitled to all pensionary benefits as he has requisite service at his credit.

11. For what has been noted above, instant petition is **accepted**, impugned judgments passed by respondents No.2 & 3 are **set aside** as a result the Grievance Petition filed by respondent No.1 before respondent No.3 shall stand **dismissed**.
No order as to costs.

(Shujaat Ali Khan)
Judge

Approved for Reporting.

Judge