

**JUDGMENT SHEET
IN THE PUNJAB SUBORDINATE JUDICIARY
SERVICE TRIBUNAL LAHORE
JUDICIAL DEPARTMENT**

Service Appeal No.04 of 2017

Naeem Ahmad

Versus

Registrar, Lahore High Court, Lahore

J U D G M E N T

Date of hearing:	10.12.2021.
Appellant by:	Hafiz Tariq Naseem, Advocate.
Respondent by:	Mr. Zawar Ahmad Sheikh, Advocate.
Research by:	Ms. Sanam Aziz Bhatti, Civil Judge / Research Officer, LHCRC.

MUHAMMAD SAJID MEHMOOD SETHI, J. / MEMBER:-

Through instant appeal, appellant has assailed notifications dated 08.12.2012 and 21.03.2017, issued by respondent, whereby appellant's services were terminated under Section 10 of the Punjab Civil Servants Act, 1974 and his representation in this regard was also declined.

2. Brief facts of the case are that services of appellant were terminated during probation period under Section 10 of the Punjab Civil Servants Act, 1974 vide notification dated 08.12.2012. Appellant filed revision petition, which was disposed of with the observation that his service appeal was pending. Appellant's Service Appeal No.6 of 2013 was declined vide judgment dated 01.04.2016 with the direction to respondent to place his review petition / departmental appeal before the Administration Committee for decision. Appellant was afforded personal hearing by an Hon'ble Judge of this Court, who recommended the appellant to be reinstated into service or to conduct regular inquiry as the competent authority deems appropriate. The Administrative Committee dismissed

appellant's representation vide notification dated 21.03.2017. Hence, instant appeal.

3. Learned counsel for appellant submits that despite recommendation of the Hearing Officer, neither appellant was reinstated into service nor regular inquiry was conducted in the matter and appellant's representation has been declined without any cogent reason. Adds that in identical matter i.e. Service Appeal No.3 of 2017, this Tribunal has directed the respondent to hold regular inquiry in the matter by setting aside the impugned orders. Prays for the same relief.

4. On the contrary, learned Legal Advisor of respondent submits that the competent authority is not bound by the recommendation of the Hearing Officer especially when the whole service record of appellant was with the competent authority. Adds that appellant was afforded reasonable opportunity of hearing at each stage, therefore, impugned notifications are liable to be upheld.

5. Arguments heard. Available record perused.

6. Perusal of record shows that appellant's services were terminated during probation period on the charges of corruption and acquiring assets beyond means. On the contrary, appellant has refuted the allegations and in such eventuality, the matter involving controversial questions of facts could not have been decided without detailed scrutiny and holding a regular inquiry. Termination of services with stigmatic charges, without holding a regular inquiry, degenerates a host of adverse assumptions against one's character, which has a bearing on his / her reputation and goodwill for his / her future service career. Thus, it offends right to life and dignity of man as enshrined in Articles 9 & 14(1) of the Constitution of the Islamic Republic of Pakistan, 1973. The competent authority must not dispense with the regular inquiry that may be necessary to probe into charge, particularly when there is a likelihood of imposition

of major penalty of termination from service if the allegation is proven because it would result into grave miscarriage of justice and prejudice to the aggrieved civil servant. If at all, regular inquiry is to be dispensed with, plausible reasons should have been provided. Reference, in this regard, can be made to The Secretary, Government of the Punjab, through Secretary, Health Department, Lahore and others v. Riaz-ul-Haq (1997 SCMR 1552), Abdul Qayyum v. D.G., Project Management Organization, JS HQ, Rawalpindi and 2 others (2003 SCMR 1110), Muhammad Idris Khan v. Secretary/Chairman, Ministry of Railways, Islamabad and 5 others (2006 SCMR 104), Salman Faruqui vs. Javed Burki, Authorized Officer, Secretary, Ministry of Water and Power, Government of Pakistan, Islamabad and another (2007 SCMR 693), Dr. Kumail Abbas Rizvi v. University of Punjab and others [2017 PLC (C.S.) 569], Naeem Akhtar Chang v. Federation of Pakistan through Secretary Ministry of Interior, Islamabad and 2 others [2017 PLC (C.S.) Note 100], Saleem Wazir Professor Community Medicine and 6 others v. Government of Khyber Pakhtunkhwa through Secretary Health Peshawar and 2 others [2019 PLC (C.S.) 224] and Shakir Ali and another v. National Accountability Bureau through Chairman, Islamabad and another [2021 PLC (C.S.) 683].

In the case of Riaz-ul-Haq supra, the Hon'ble Supreme Court observed as under:-

"7. Without going into the controversy, as to whether the respondent's claim that he was a permanent employee, we may observe that there is a marked distinction between simpliciter termination of services in accordance with the terms of appointment and the termination of services on the ground of misconduct. There is no doubt that if a person is employed on contract basis and if the terms of employment provide the manner of termination of his services, the same can be terminated in terms thereof. However, if a person is to be condemned for misconduct, in that event, even if he is a temporary employee or a person employed on contract basis or a

probationer, he is entitled to a fair opportunity to clear his position, which means that there should be a regular enquiry in terms of the Efficiency and Discipline Rules before condemning him for the alleged misconduct...”

7. It is also to be noted that pursuant to direction of this Tribunal vide order dated 01.04.2016 passed in Service Appeal No.6 of 2013, the Hon’ble Administration Committee appointed a Hearing Officer, who after affording personal hearing to appellant recommended him to be reinstated into service or to hold regular inquiry in order to establish allegations levelled against appellant. However, the competent authority did not take into consideration the aforesaid recommendation and proceeded to pass termination order after simply providing personal hearing to appellant.

8. Undoubtedly, under the law, the competent authority is not bound by the recommendation of the Inquiry Officer / Hearing Officer and has the powers to differ with it however, such power has to be exercised on the basis of record and for cogent and valid reasons duly recorded. Whereas, no reasons have been assigned by the competent authority to disagree with the findings and recommendations of the Hearing Officer. Reference can be made to *Naveed Shah v. City Police Officer, Faisalabad and 2 others* [2017 PLC (C.S.) 214], *Allah Ditta v. Province of Punjab and 2 others* [2017 PLC (C.S.) 437], *Asif Yousaf v. Secretary Revenue Division, CBR, Islamabad and another* (2014 SCMR 147) and *Director Postal Life Insurance, Lahore v. Shakeel Ahmad* (2021 SCMR 1162).

9. Needless to say that appellant is entitled to due process, right to be treated fairly at all times, right to procedural fairness and right to procedural propriety. Appellant, being a citizen of the Islamic Republic of Pakistan, has the right to a fair procedure and it has been constitutionally guaranteed. In this regard, reliance is placed on *Naubahar Ali v. Vice-Chancellor and others* (2010 PLC (C.S.) 783), *Muhammad Umar v. D.G.*

Excise and Taxation and others [2011 PLC (C.S.) 384] and Pakistan Defence Officers Housing Authority v. Mrs. Itrat Sajjad Khan and others (2017 SCMR 2010).

10. In an identical matter i.e. Service Appeal No.03 of 2017 titled Muhammad Khalid Farooq v. Registrar, Lahore High Court, Lahore, this Tribunal, vide order dated 04.02.2021, while setting aside impugned orders, directed the respondent to hold regular inquiry in the matter. The operative part of the observations is reproduced hereunder:-

“4. Today, the learned counsel for the respondent submits that the respondent has no objection, if regular inquiry of the appellant is directed. Consequently, by allowing the instant appeal, the impugned orders dated 20.09.2011 and 21.03.2017 are **set-aside**, with a direction to the respondent to hold regular inquiry in the matter. However, all the back benefits of the appellant shall be dependent, upon result of regular inquiry.”

When confronted with the above, learned Legal Advisor for respondent, despite all his earnest efforts, could not satisfy us that appellant is not placed at the same pedestal as the appellant in above referred appeal. We are, thus, of the candid view that the appellant would be made subject to discrimination, if he is treated otherwise in oblivion of Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973.

11. In view of the above discussion, this appeal is **allowed** and impugned orders / notifications dated 08.12.2012 and 21.03.2017 are set aside with a direction to the respondent to hold regular inquiry and thereafter decide the matter as per law. The question of back benefits shall be dependent upon the fate of regular inquiry.

(Mirza Viqas Rauf) (Muhammad Sajid Mehmood Sethi)
Chairman Member

APPROVED FOR REPORTING

Member