

Muhammad Jahanzab (Visually Impaired) (Ex. Music Teacher) vs.
Secretary, Special Education Department, Punjab & another

Appeal No. _____

14.06.2023

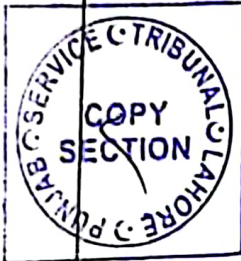
PRESENT

1. Mr. Allah Nawaz Khosa Advocate,
Counsel for the appellant
2. Malik Muhammad Qasim, D.D.A.
3. Mr. Adnan Bashir, Litigation Officer, D.R.

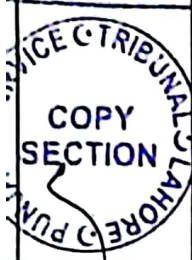

Through this appeal filed under Section 4 of the Punjab Service Tribunals Act, 1474 the appellant has assailed the vires of the orders dated 09.05.2022 and 28.10.2022 passed by the respondents.

2. Precisely, the appellant being a visually impaired person was appointed as Music Teacher on contract basis in the year 2017 in Special Education Department, Punjab and was posted at Govt. Secondary Special Education Centre, Rahimyar Khan. His services were regularized in the year 2020. The disciplinary proceedings were initiated against him under PEEDA Act, 2006 on the charge of inappropriate touch, undesirable behavior and harassment rendered towards female adult visually impaired student. A preliminary inquiry followed by the regular departmental inquiry was conducted into the aforesaid allegations so leveled against the appellant and finally the competent authority, vide order dated 09.05.2022 imposed upon him the major penalty of "dismissal from service". The departmental appeal filed by the appellant was rejected, vide order dated 28.10.2022. Hence, this appeal.

3. Learned counsel for the appellant maintained that the appellant has been made a scapegoat in the matter; that there were certain complaints against the In-charge and other teachers of the Centre, who made plan against the appellant; that though the appellant disclosed this fact in his detailed



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| <p style="text-align: center;">  SERVICE TRIBUNAL LAHORE COPY SECTION PUNJAB </p> <p style="text-align: center;">  4/06/23 </p> | <p>written reply, but the inquiry officer did not consider the same and that the appellant was also not provided opportunity to cross-examine the witnesses examined during the inquiry. Learned counsel for the appellant, on the strength of case law reported in 2022 PLC (C.S) 474 maintained that the CCTV footage without any forensic test has no evidentiary ^{value} With these submissions, learned counsel for the appellant prayed for acceptance of the appeal. On the other hand, learned Deputy District Attorney opposed this appeal while supporting the impugned orders.</p> <p>4. Arguments heard and record perused.</p> <p>5. The appellant has been proceeded under the provisions of PEEDA Act, 2006 on the charges of some unethical behavior with the female students. A regular inquiry was conducted in the matter, the report whereof has been produced by the department. The perusal of inquiry report shows that the inquiry officer recorded the statements of 14 witnesses including the students and teachers of the Center, but surprisingly the appellant was not provided an opportunity to cross-examine them. This situation made the whole proceedings defective. The inquiry officer has also referred the so-called confessional statement of the appellant that he sought for pardon. But it is a matter of fact that the appellant has taken a specific defense that all the propaganda started against him when he raised certain serious allegations against Mr. Irfan Ahmad, Senior Teacher working as Temporary Principle/Headmaster. The appellant took the same stance in</p> |

his reply submitted during the inquiry as well as in his reply to the final show cause notice. In the said scenario, the statement of the appellant that he requested for apology could not be considered as his confession. Even otherwise, when guilt of the appellant was otherwise not established, his confessional statement would not be sufficient.

6. So far as the CCTV footage is concerned, in the absence of any forensic report qua the authenticity of CCTV footage, the same cannot be considered as legal basis for proceeding against a person. Reliance is placed upon 2021 SCMR 1077 and 2022 PLC (C.S) 474. In a nutshell, the appellant has been fixed on the basis of defective inquiry and insufficient evidence. The impugned orders passed on the basis of such defective proceedings are not sustainable.

7. Consequently, the appeal in hand is partially allowed, the impugned orders are set aside and the appellant is reinstated into service with immediate effect (i.e. from today dated 14.06.2023). However, the case is remanded to the competent authority for holding a proper regular inquiry into the allegations against the appellant and deciding the matter afresh strictly in accordance with law, within 90 days from the receipt of this order. The fate of the intervening period for which the appellant remained out of service shall also be decided by the competent authority on the outcome of regular



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Registrar
Service Tribunal
Lahore
ANNOUNCED
14.06.2023

SHAKIR HASSAN
M.S.C./MEMBER II