2009 P L C (C.S.) 634

[Supreme Court of Pakistan]

Present: Mian Shakirullah Jan and Ch. Ijaz Ahmed, JJ

FEDERATION OF PAKISTAN and others

Versus

TAHIR LATIF

Civil Appeal No.765 of 2002 in C.P. 2838 of 2001, decided on 11th September, 2006.

(Against the judgment, dated 28-6-2001 passed by the Federal Service Tribunal Lahore Bench, Lahore, in Appeal No.9(L) of 1999).

(a) Government Servants (Efficiency and Discipline) Rules, 1973---

----Rr. 3 & 5---Constitution of Pakistan (1973), Art.212 (3)---Leave to appeal was granted by Supreme Court to re-examine the submissions made before Service Tribunal and to consider; whether judgment passed by the Tribunal could be sustained in law; and whether under Government Servants (Efficiency and Discipline) Rules, 1973, more than one minor penalties could be imposed on an employee as a result of disciplinary proceedings.

(b) Government Servants (Efficiency and Discipline) Rules, 1973---

----Rr. 3(d) & 5---Absence from duty---Minor penalty---Regular inquiry, non-holding of---Civil servant was selected for a two years course abroad---Course was not completed in due time, therefore civil servant sought ex-Pakistan .leave, which was sanctioned---Civil servant sought further extension of leave on the ground that the course was not completed, such further extension was refused by the authorities- -Civil servant overstayed for about six months and the period of overstay was treated as absence from duty---After issuing show-cause notice, disciplinary proceedings were conducted against civil servant and penalty of withholding of increment for one year was imposed---Penalty imposed by the Authorities was set aside by Service Tribunal---Validity---Authorities had passed the order against civil servant without holding regular inquiry---In present case the contents of show-cause notice and reply if put in a juxtaposition, it would be clear that matter could not be decided without holding regular inquiry---Competent authority had not passed speaking order against civil servant without holding regular inquiry in terms of R.5 of Government Servants (Efficiency and Discipline) Rules, 1973---Such action of authorities was not in consonance with the settled law laid down by Supreme Court---Clause (d) of R.3 of Government Servants (Efficiency and Discipline) Rules, 1973, was an independent clause which was code in itself---To take action under R.3(d) of Government Servants

(Efficiency and Discipline) Rules, 1973, its pre-conditions must exist meaning thereby that it would also he necessary to hold that on such account, retention of civil servant in service was prejudicial to national security---Mere remaining outside the country during his stay period, after submitting his application for extension of leave to the competent authority, did not fall within the parameters prescribed in R.3(d) of Government Servants (Efficiency and Discipline) Rules, 1973---Authorities failed to raise any substantial question of law of public importance as contemplated in Art 212(3) of the Constitution Supreme Court declined to interfere in the judgment passed by Service Tribunal---Leave to appeal was refused.

Ghulam Muhammad Khan's case 1996 SCMR 802 and Nawab Khan's case NLR 1954 Service 54 rel.

(c) General Clauses Act (X of 1897)---

----S. 24-A--Administrative order----Scope---Under S.24-A, General Clauses Act, 1897, it is the duty and obligation of competent authority to award minor punishment alter application of mind with reasons.

Messrs Airport Support Service's case 1998 SCMR 2268 rel.

(d) Constitution of Pakistan (1973)---

---Art. 212(3)---Supreme Court---Jurisdiction---Findings of fact---Supreme Court is not a court of appeal to reappraise evidence while exercising power under Art.212 (3) of the Constitution---Findings of fact given by Service Tribunal cannot be disturbed in constitutional jurisdiction.

Ms. Naheeda Mehboob Elahi, D.A.-G. with Ch. Akhtar Ali, Advocate-on-Record for Appellants.

Rai Muhammad Nawaz, Advocate Supreme Court for Respondent.

ORDER

CH. IJAZ AHMED, J.--- The appellants sought leave to appeal against the judgment, dated 28-6-2001 passed by the Federal Service Tribunal, Lahore Branch, Lahore, in Appeal No.9(L) of 1999 by filing C.P. No.2838 of 2001 before this Court in which leave was granted on 22-5-2002 in the following term:--

> "Petitioners seek leave to appeal against the Federal Service Tribunal judgment, dated 28-6-2001, allowing service appeal of the respondent against the award of minor penalty for his unauthorized absence from duty.
>
> Respondent was selected for Post Graduate Course in USA for a period of two years commencing from 15-8-1995 to 14-8-1997. The course of study, according to the respondent, was not completed, therefore, he applied for

extension of leave for six months and leave Ex-Pakistan for three months. Three months Ex Pakistan leave was sanctioned in his favour whereas extension of leave for six months was refused by the competent authority and he was directed to report for duty on or before 11-11-1997. Again through an application dated 15-2-1998 he requested for further extension of leave for the reasons that he had not yet completed the course of his studies. This request was not acceded to and the respondent was issued a show-cause notice, dated 12-5-1998 to explain his overstay. Respondent responded to the notice claiming that his overstay abroad was beyond his control. He actually reported for duty on 21-5-1998.

After initiating disciplinary proceedings the competent authority vide order, dated 31-7-1998 imposed the minor penalty of withholding of increment for one year. His period of absence from 11-11-1997 to 20-5-1998 was regularized by debiting twice the period of absence to be credited to his leave account as extraordinary leave (without pay). Through another letter, dated 10-10-1998 the petitioners called upon the respondent for depositing Rs.78,660 in the public exchequer, being the cost of air ticket from USA to Pakistan, as it was beyond his entitlement as per Rule, 552 of Passage Regulations, 1980. Respondent challenged the award of minor penalty, treatment of his period of absence as leave without pay and the direction for recovery of amount, before the Tribunal, who after hearing the parties allowed the appeal and set aside the action taken against the respondent.

We have heard Sardar Muhammad Aslam, learned Deputy Attorney-General for petitioners and respondent Tahir Latif in person. It is admitted that the respondent was sanctioned two years ex-Pakistan Leave for study purpose and he undertook in writing before availing of the leave and proceeding to USA that he would complete his course of study within the sanctioned period of leave and would not claim any extension of leave or any other facility from the employer. However, looking to his genuine difficulty the competent authority had sanctioned further extension of ex-Pakistan Leave on full pay for three months to enable the respondent to complete his course of study. It is the case of the respondent that it was beyond his power and control to resume his duty on expiry of the sanctioned leave, therefore, he had asked for further extension of leave, which was wrongly refused and rightly rectified by the Tribunal.

On perusal of the judgment of the learned Tribunal we tentatively find that the findings of fact are recorded on extraneous and compassionate reasons, rather than on valid grounds. We, therefore, grant leave to appeal to re-examine the submissions made before the Tribunal, and to consider whether the impugned judgment can be sustained in law. We would also like to call upon the learned D.A.-G. to conic prepared at the time of hearing of the appeal to satisfy the Court whether under the Government Servants (Efficiency and Discipline) Rules, 1973, more than one minor penalties could be imposed on an employee as a result of disciplinary proceedings."

2. The learned Deputy Attorney submit that competent authority was justified to award more than one minor penalties to the respondent in view of rule 3(d) of the

Government Servants (Efficiency and Discipline) Rules, 1973. She further urges that competent authority had not granted leave to the respondent for six months as desired by him, therefore, respondent was found guilty by the competent authority and passed the order against him on 31-7-1998 on the ground that he did not satisfactorily explain his wilful absence from 11-11-1997 to 20-5-1998 and also did not report within the prescribed period after availing the extended leave. The learned Service Tribunal had set aside the order of the appellants in violation of the rules and regulation of the appellants on humanitarian and sympathetic grounds as depicted from para. 4 of the impugned judgment of the Service Tribunal.

3. The learned counsel for the respondent has vehemently supported the impugned judgment. He further maintains that appellant had passed the impugned order against the respondent without any justification without regular inquiry in spite of the fact that matter could not be decided without regular inquiry as evident from the reply of the show-cause notice submitted by the respondent.

4. We have considered the submissions of learned counsel for the parties and perused the record. It is an admitted fact that appellants had passed the impugned order on 31-7-1998 against the respondent without holding regular inquiry. In case the contents of show-cause notice and reply of the show-cause notice be put in a juxtaposition, then it is crystal clear that matter could not be decided without holding regular inquiry. It is pertinent to mention here that competent authority had not passed the speaking order against the respondent without holding regular inquiry in terms of rule 5 of the Government Servants (Efficiency and Discipline) Rules, 1973. Such action of the appellants is not in consonance with the law laid clown by this Court in the following judgments:--

(i) Ghulam Muhammad Khan's case 1996 SCMR 802 and (ii) Nawab Khan's case NI.R 1954 Service 54.

5. It is pertinent to mention here that respondent had taken a specific ground in reply to show-cause notice that appellants had failed to discharge their obligation while not releasing amount of scholarship to the respondent as is evident from para.5-C and para.8 of his reply which are reproduced hereunder:--

"5. a to b ----------

(c) My tuition fee and subsistence allowance was terminated after 4th Semester and payment for medical insurance was not made after 2nd Semester.

.....

(8) It is worth mentioning that tuition fee for the last two Semesters i.e. 5th and 6th Semester is still to be paid to the University. In case if it is not paid University will not issue degree. Moreover, it is obligation of the department to pay tuition fee, absence of which will bring bad name to country." (underlining is ours).

6. The competent authority did not take into consideration the aforesaid stand of the respondent in the impugned order, dated 31 7-1998. The competent authority had given finding of fact that respondent could not come well in time in the country on account of unavoidable circumstances and unseen problems peculiar to the nature of his research in view of letter dated 10 3-1998 from Mr. A.K. Burns, Assistant Professor of Planning Kansas State University read with certificate issued by the First Secretary Education Embassy of Pakistan Washington D.C. according to which respondent had been delayed in USA because of his Convocation on 15-5-1998. Subsequently, he returned to Pakistan and reported for duty on 21-5-1998. These facts show that he had saved the foreign exchange otherwise he would have again visit USA to obtain his degree. Thus, he had taken a lenient view while awarding minor punishment to the respondent as the respondent had secured higher qualification/knowledge relevant to his job requirement and it would be in the interest of the State if he has afforded an opportunity to serve in the MES and contribute in his field. The impugned order itself contradictory in nature. It is the duty and obligation of the competent authority to award the minor punishment to the respondent alter application of mind with reasons after addition of section 24-A of General Clauses Act as the law laid down by this Court in Messrs Airport Support Services's case 1998 SCMR 2268. The contention of the learned counsel for the appellants that competent authority had lawful authority to award two punishments to the respondents in view of the rule 3 clause "D" has no force as is depicted from the mere perusal of the said rule which is reproduced hereunder:--

> "(3) Grounds for penalty.---Where a government servant in the opinion of the authority:--- a, b, c ----------
>
> (d) is engaged or is reasonably suspected of being engaged in subversive activities, or is reasonably suspected of being associated with others engaged in subversive activities or is guilty of disclosure of official secrets to any unauthorized person, and his retention in service is, therefore, prejudicial to national security, the authority may impose on him one or more penalties.

7. The following are the ingredients of the said rule:--

> (a) when he is engaged in subversive activities;
>
> (b) when he is reasonably suspected of being associated with others engaged in subversive activities; and
>
> (c) when he is guilty of disclosure of official secrets to any unauthorized person."

8. It is pertinent to mention here that clause "D" is an independent clause which is code in itself. To take action under this section, the aforesaid pre-conditions must be existed meaning thereby that it shall also be necessary to hold that for this account his retention in service is n for that reason prejudicial to national security. Mere remaining outside the country during his stay period after submitting his application for extension of leave to the competent authority does not fall within the aforesaid

parameters prescribed in the aforementioned clause "D". It is settled law that this Court is not Court of appeal to reappraise evidence while exercising power under Article 212(3) of the Constitution. The learned Service Tribunal had given finding of fact against the appellants which could not be disturbed in constitutional jurisdiction

9. In view of what has been discussed above, this appeal has no merit. Even otherwise the appellants have failed to raise any substantial question of law of public importance as contemplated in Article 212(3) of the Constitution. The appeal being devoid of any force is dismissed.

M.H./F-23/SC Appeal dismissed.