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REGISTERED

No. C.P.1591/2019 - SCJ

SUPREME COURT OF PAKISTAN

Islamabad, dated 12-09 2023

From The Registrar,
Supreme Court of Pakistan,
Islamabad.

To 1. The Addl. Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Camp Court Abbotabad.

2. The Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Subject: CIVIL PETITION NO. 1591 OF 2019

Jawad Ali

Versus

Registrar, Peshawar High Court, Peshawar & another

On appeal from the Judgment/Order of the Khyber Pakhtunkhwa Service Tribunal, Camp Court Abbotabad dated 20/03/2019 in S.A.365/2016.

Dear Sir,

I am directed to enclose herewith a certified copy of the Order/Judgment of this Court dated 22/04/2022 dismissing the above cited case in the terms stated therein for information and further necessary action.

Please acknowledge receipt of this letter along with its enclosure immediately.

Encl: Order/Judgment:

Yours faithfully,


(MUHAMMAD MUJAHID MEHMOOD)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Umar Ata Bandial, CJ
Mr. Justice Syed Mansoor Ali Shah
Mrs. Justice Ayesha A. Malik

CIVIL PETITION NO.1591 OF 2019

[Against the judgment dated 20.3.2019, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar, in Service Appeal No.365 of 2016]

Jawad AliPetitioner(s)

Versus

Registrar, Peshawar High Court, Peshawar
and anotherRespondent(s)

For the Petitioner(s) : In person

Respondent(s) : N.R.


Date of Hearing : 22.04.2022

JUDGMENT

AYESHA A. MALIK, J. This Civil Petition for Leave to Appeal under Article 212(3) of the Constitution of the Islamic Republic of Pakistan, 1973, has arisen out of the judgment dated 20.03.2019, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar (**the Tribunal**), whereby Service Appeal No.365 of 2016, filed by the Petitioner, was dismissed.

2. The basic grievance of the Petitioner is that he was appointed as Junior Clerk (BPS-07) in 2003 and was removed from service for wilful absence from duty, without due process, notwithstanding, the fact that he applied for Ex-Pakistan Leave on 28.02.2009. The Petitioner claims that the Respondent delayed its response to the leave application meanwhile, the

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Petitioner was booked to travel on 08.03.2009. As the leave application was not decided by Respondent before the Petitioner's intended date of travel and they took undue time in considering his leave application, he was compelled to leave for Sharjah.

3. The Petitioner, who appeared in person, states that he submitted his leave application on 28.02.2009 and it was forwarded to the competent authority on 02.03.2009, yet when he inquired from the relevant authority, he was informed that they received it on 14.04.2009. By that time the Petitioner had already left the country for the United Arab Emirates (UAE) on the assumption that his leave application would be granted. He also states that no departmental inquiry was conducted against him, yet he was removed from service for wilful absence from service.

4. We have examined the record and find that the Petitioner applied for leave on 28.02.2009, for a period of two years on the ground that he has obtained employment in the UAE. This application was received on 14.04.2009 by the office of the District and Sessions Judge, Abbottabad. The Petitioner filed a second application on 05.03.2009 seeking Ex-Pakistan Leave for six months on the ground that his maternal uncle is hospitalized and he needs to attend to him. As per the Petitioner's own statement, he left for the UAE on 08.03.2009. The District and Sessions Judge, Abbottabad, took notice of this fact and passed an order on 17.03.2009 wherein, the learned Judge stated that he had informed the Petitioner that he can


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not be granted of a leave for the period of six months, yet despite the same the Petitioner has left the country without waiting for his leave to be sanctioned or for obtaining Ex-Pakistan Leave. As per the order of the learned District and Sessions Judge this is a misconduct under the Efficiency & Disciplinary Rules and the Petitioner was given 15 days to return to his work. The Petitioner failed to return within the 15 days period hence, vide order dated 15.04.2009, he was removed from service. The record shows that the order dated 17.03.2009 was made in the presence of the Petitioner's brother and a show cause notice in the shape of an advertisement was issued in a Daily Newspaper of Peshawar. The Petitioner challenged the order of 15.04.2009 by way of a representation before the Chief Justice of the Peshawar High Court, Peshawar on 16.02.2010. This was numbered as Departmental Appeal No.9 of 2010, wherein an order was passed adjourning the case. The Departmental Appeal was decided vide judgment dated 07.03.2016, wherein the Petitioner's removal from service was maintained on the basis that he proceeded abroad without permission for leave from the office. Thereafter, the Petitioner filed Service Appeal No.365 of 2016 before the Service Tribunal, which was dismissed vide impugned judgment dated 20.03.2021. Hence, this Civil Petition for Leave to Appeal.


5. We have heard the Petitioner in person and have examined the impugned judgment dated 20.03.2019, passed by the Tribunal. The basic allegation against the Petitioner is that he was absent from duty for eleven months from 08.03.2009 to

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08.02.2010 without obtaining permission from the competent authority. Furthermore, he left the country in search of employment on 08.03.2009 and returned on 08.02.2010, thereby being absent from duty for eleven months. The absence from duty for eleven months is admitted by the Petitioner. The contention of the Petitioner that due process was not followed as no inquiry was carried out, is without basis as the absence from duty is an admitted fact and this Court has already held in the cases titled as Hassan Raza v. Federal Board of Revenue through Chairman and others (2020 SCMR 994) and National Bank of Pakistan and another v. Zahoor Ahmed Mengal (2021 SCMR 144) that in case of wilful absence from duty regular inquiry is not required, as it is apparent from the record. Furthermore, we find that mere filing of an application for grant of leave does not mean or suggest that leave will be granted. The Petitioner was obligated to wait for his application to be decided. Instead he simply filed the application seeking leave for six months as per his own contentions on 05.03.2009 and left the country on a self proclaimed leave on 08.03.2009. The record shows that the Petitioner, in fact, moved two applications one seeking leave for the period of two years on the ground that he has obtained an employment visa in Sharjah and desires to work there and the second application on 05.03.2009, wherein he intended to seek permission to travel to the UAE to attend to his ailing uncle. Both applications give different reasons for the leave sought and for different periods of time. The Respondents have stated that they informed the Petitioner at the time when

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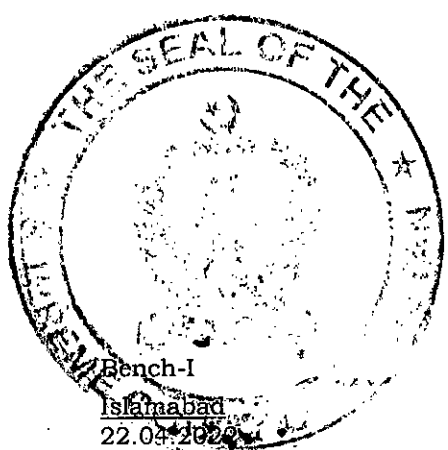

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he raised this issue before them that he can not be given permission to take leave for six months and that he can not be given leave to seek employment in another country, yet despite the same the Petitioner proceeded abroad on 08.03.2009. Consequently, we find that the Petitioner not only was wilfully absent for eleven months but he also proceeded abroad without seeking Ex-Pakistan Leave that to for employment purposes.

6. Under the circumstance, we find no illegality in the impugned judgment, which has upheld the order of removal of Petitioner from service, essentially on the ground that even though he was removed from service on 15.04.2009, he did not return to his duty until 08.02.2010, which means that he had little regard for his employment with the Respondent.

7. We find no illegality in the impugned judgment dated 20.03.2009, passed by the Tribunal. Consequently, this Civil Petition is dismissed and Leave to Appeal is refused.

Scd - ~ 1.7.11 - HCS
 Scd - ~ ~ ~ J
 Scd - ~ ~ ~ J



Certified to be True Copy
 [Signature]
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 Supreme Court of Pakistan
 Islamabad

'NOT APPROVED FOR REPORTING'
 Mahtab H. Sheikh
 22/4/2020