

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 456/2022

Date of Institution ... 30.03.2022

Date of Decision... 21.09.2023

Qaisar Khan, Ex-Naib Nazir/Muharrar, District Courts Peshawar.
(Present) Village Musazai, Tehsil & District, Peshawar.

... (Appellant)

VERSUS

District & Sessions Judge, Peshawar and 01 other.

... (Respondents)

MR. MUHAMMAD ZAFAR TAHIRKHELI,
Advocate

--- For appellant.

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

--- For respondents.

SALAH-UD-DIN
FAREEHA PAUL

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts giving rise to filing of the instant appeal are that Civil Suit No.141/1 of 2019 titled "*Mst. Sabeeha and others Versus Assistant Director Land, DHA and others*" was shown to have been instituted in the court of the then Senior Civil Judge, Peshawar namely Mst. Mahjabeen Shabbir which was entrusted to the court of the then Civil Judge-XVII namely Nosheen Nisar on 02.05.2019 and was shown to have been decreed ex-parte vide judgment dated 02.02.2020. The date on which the judgment was shown to have been passed was falling on non-working day i.e Sunday. The matter was brought into the notice of Chief Justice Peshawar High Court, Peshawar, who directed to look into the matter. After preliminary discreet probe and scrutiny of order sheets as well as judgment, Member Inspection Team Peshawar High Court, Peshawar addressed letter dated 06.04.2021 to the District & Sessions Judge Peshawar for conducting of



an open inquiry in the matter. Vide order dated 09.04.2021, the District & Sessions Judge Peshawar appointed Muhammad Sajid, the then learned Additional District & Sessions Judge-XIII for conducting open inquiry in the matter. The inquiry officer conducted open inquiry in the matter and submitted his report to the District & Sessions Judge Peshawar, wherein it was held that the appellant was prima-facie involved in the matter, while one Mujahid Khan, the then Reader to the court of learned Civil Judge-XVII was held liable for negligence. The inquiry report was forwarded by District & Sessions Judge Peshawar to Peshawar High Court, Peshawar. Vide letter No. 735/MIT dated 22.09.2021 Peshawar High Court, Peshawar directed the District & Sessions Judge Peshawar to proceed against the identified delinquent officials under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 as well as to initiate criminal proceedings against the beneficiaries of fake judgment and other accomplices. The appellant was thus proceeded against by issuing him charge sheet as well as statement of allegations and Mr. Fazal Nasir Shah, the then Senior Civil Judge (Judicial) was appointed as Inquiry Officer. On conclusion of the inquiry, the appellant was awarded major penalty of dismissal from service vide order dated 17.02.2022 passed by the then Senior Civil Judge (Admn) Peshawar. The same was challenged by the appellant by way of filing departmental appeal before the District & Sessions Judge Peshawar, which was also dismissed vide order dated 22.03.2022, hence the instant appeal.

2. On receipt of the appeal and its admission to regular hearing, respondents were summoned, who put appearance through their

representative and contested the appeal by way of filing written reply raising therein numerous legal as well as factual objections.

3. Learned counsel for the appellant has argued that no direct evidence about involvement of the appellant in any act of misconduct was brought on record during the inquiry proceedings and the findings of the inquiry officer were based merely on surmises and conjectures. He next contended that file of the concerned Civil Suit was received by the appellant being Muharrar of the court and necessary entries were made in the relevant register alongwith 11 others freshly instituted cases on the same day. He also argued that on disposal of the concerned Civil Suit, the appellant received the file of the same and after necessary completion, the same was sent to the record room for its consignment. He further argued that no evidence was collected during the inquiry which could show that the proceedings in the concerned civil suit were fictitious and fake. He also argued that there are material dents in the inquiry proceedings, vitiating the same, therefore, the impugned orders are not sustainable in the eye of law. He next contended that the appellant was having an unblemished service career of about 22 years and had performed his duty with devotion and honesty. In the last he requested that the impugned orders may be set-aside and the appellant may be reinstated in service with all back benefits.

4. On the other hand, learned Deputy District Attorney for the respondents has argued that the appellant was serving as Muharrar to the court of Civil Judge-XVII Peshawar and in view of the evidence collected during the inquiry, he was found to have been actively involved in preparation of false and concocted judgment and decree

dated 02.02.2020. He further argued that the appellant being in league with beneficiaries of the concocted judgment and decree had facilitated them by recording fake and factitious entries in the relevant registers. He next contended that comments of the concerned presiding officers were obtained in the inquiry proceedings, wherein she had categorically denied her signatures on all the order sheets as well as judgment and decree dated 02.02.2020 shown to have been passed in the said Suit. He further argued that the appellant was found involved in the issue in question during the fact finding as well as regular inquiry and he was unable to rebut the allegations leveled against him. He also argued that the inquiry proceedings were conducted by complying all legal and codal formalities and the appellant was provided opportunity of personal hearing as well as self defense. In the last he requested that the impugned orders may be kept intact and the appeal in hand may be dismissed with costs.


5. Arguments have already been heard and record perused.
6. During the inquiry proceedings, Qaisar Khan Reader to the Court of Senior Civil Judge (Judicial) Peshawar was examined as PW-1. He had produced Register pertaining to marking of fresh suits for the year 2019 according to which no entry was recorded about institution of the concerned civil suit on 02.05.2019. Similarly, it was also proved during the inquiry that no entry was recorded in Register *Peshi* (Attendance Register) regarding the concerned Civil Suit No. 141/1 of 2019 titled "*Mst. Sabeeha and others Versus Assistant Director Land, DHA and others*" on 02.05.2019 and afterwards. According to the testimony of the PWs recorded during the inquiry, the concerned Civil Suit was not at all


instituted in the court of Senior Civil Judge (Judicial) Peshawar. The appellant has, however admitted the receipt of the concerned Civil Suit on its institution and has also admitted that the same was sent by him to record room for its consignment. In view of the evidence recorded during the inquiry, the involvement of the appellant in the unfortunate episode of constructing a fake file alongwith fake judgment and decree and sending of the same to record room for its consignment has been proved.

7. The inquiry proceedings were conducted in compliance with the relevant provisions of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and the appellant was provided opportunity of personal hearing as well as self defense. The appellant was custodian of the Registers maintained by Muharrar of the court but through his active connivance, fraud was perpetrated against the court, therefore, he does not deserve any leniency in penalty awarded to him.

8. In view of the above discussion, the appeal in hand stands dismissed being without any merits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
21.09.2023


(FAREEHA PAUL)
MEMBER (EXECUTIVE)

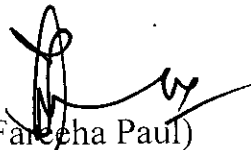

(SALAH-UD-DIN)
MEMBER (JUDICIAL)


ORDER
21.09.2023

Appellant in person present. Mr. Asif Masood Ali Shah,
Deputy District Attorney for the respondents present. Arguments
have already been heard and record perused.

Vide our detailed judgment of today, separately placed on
file, the appeal in hand stands dismissed being without any merits.
Parties are left to bear their own costs. File be consigned to the
record room.

ANNOUNCED
21.09.2023


(Fareeha Paul)
Member (Executive)


(Salah-Ud-Din)
Member (Judicial)