

Service Appeal No. 11473/2020

Muhammad Shahideen, Mali BPS-03, Commissioner Office Bannu
Division.....(*Appellant*)

Versus

1. Senior Member Board of Revenue Khyber Pakhtunkhwa, Peshawar.
3. Commissioner Bannu Division Bannu.....(*Respondents*)

Present:

Mr. NASIR MEHMOOD,
Advocate..... For appellant

Mr. MUHAMMAD JAN
District Attorney.....For respondents

Date of Institution.....21.09.2020
Dates of Hearing.....12.10.2023
Date of Decision.....12.10.2023

CONSOLIDATED JUDGMENT

MUHAMMAD AKBAR KHAN, MEMBER(E):-Through this single judgment the instant appeal and connected service appeals detailed above are decided as three are against the same departmental proceedings and involve similar question and thus conveniently be decided together.

02. According to the facts gathered from the record, the appellant was appointed as Cook (BPS-04) on 22.02.2011 in the office of Commissioner Bannu, Divison Bannu. He was issued show cause notice on 17.03.2020 on the allegations that his wife was receiving cash from Benazir Income Support Program which were duly replied by him; that inquiry was conducted and after recommendation of the inquiry report, he was imposed major penalty of removal from service vide order dated 30.04.2020. Feeling aggrieved, the appellant filed departmental appeal which was accepted on 03.07.2020 and major penalty of removal from service was converted into minor penalty of withholding of one increment for a period of

two years vide order dated 11.08.2020. Thereafter the appellant filed the instant service appeal on 21.09.2020.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellants and learned District Attorney and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned order dated 03.07.2020 is illegal, unlawful as well as based on mala fide intention and discrimination; that the appellant was not aware of the cash received by her wife from Benazir Income Support Program (BISP); that the spouse of the appellant herself has not approached the Benazir Income Support Program (BISP) rather her name was included during survey by the BISP authority, so the appellant cannot be punished for the same; that it is celebrated principle of law that on once can be punished for the wrong committed by other person, so applying the same the appellant cannot be punished for the wrong committed by his spouse; that the appellant belongs to poor family was otherwise entitled for the grant of (BISP) cash and at the time of start of Benazir Income Support Program (BISP) program there was confusion as to whether the government servant can received cash from BISP or not; that the inquiry was not held in accordance with the provision contained in the of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, so the impugned order is liable to be set aside.

05. Learned District Attorney on the other hand contended that the order is based on law and issued after fulfilling all the codal formalities; that the appellants were well aware of the fact that their spouse were taking cash grant from Benazir


Income Support Program (BISP); that the appellants were treated in accordance with the Government Civil Servant Policy/Rules.

06. Perusal of record reveals that the appellant is a low paid Class-IV employee receiving total Rs. 24800/- monthly salary. It has been admitted by the appellate authority while passing the order on departmental appeal of the appellant vide order dated 03.07.2020 that there were no clear guidelines prohibiting Government Servants to access the poverty in Benazir Income Support Program (BISP). The appellant was brought into social net of the BISP by the survey team of BISP on the basis of criteria devised by the program itself for determination of poverty. We find that apparently the appellant had no role or for that matter influence to include the name of his spouse in the list of beneficiaries of BISP, therefore, the punishment of withholding of one increment for a period of two years and recovery of Rs. 60000/- from the appellant does not seem justifiable. Moreover, the order containing the imposition of penalty of withholding of one increments for a period of two years and recovery of Rs. 60000/- is double jeopardy which is not sustainable in the eyes of law. Reliance is placed on 2022 SCMR, 1387.

07. We are, therefore, constrained to allow the instant as well as connected service appeals as prayed for. Costs shall follow the event. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 12th day of October, 2023.*


(RASHIDA BANO)
MEMBER (J)..


(MUHAMMAD AKBAR KHAN)
MEMBER (E)