

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 323/2023

Aftab Ahmad

..... Appellant

VERSUS

District & Sessions Judge Swabi and 2 others

..... Respondents

INDEX

S.No	Description of Documents	Annexure	Page
1	Replication along with affidavit		1-5
2	Copy of the judgment reported in 1997 SCMR 1552	R-1	6-13
3	Copy of the judgment reported in PLD 1974 SC 393	R-2	14-26
4	Copy of the judgment reported in 2001 SCMR 1566	R-3	27-29
5	Copy of the judgment reported in 2014 SCMR 1263	R-4	30-33
6	Copy of the judgment reported in 2014 PLC (C.S) 1194	R-5	34-37
7	Copy of the judgment reported in 2015 CLC 1509	R-6	38-59

Dated. 15/1.2024

افتاب احمد

Through

Appellant


Amjad Ali (Mardan)
Advocate
Supreme Court of Pakistan

ADVOCATE
/ SUPREME COURT

(1)

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No. 323/2023

Diary No. 10543

Dated 15-1-2024

Aftab Ahmad

..... Appellant

VERSUS

District & Sessions Judge Swabi and 2 others

..... Respondents

REPLICATION ON BEHALF OF APPELLANT

Respectfully Sheweth:-

PRELIMINARY OBJECTIONS:

- 1-3. That Para No 1 to 3 of the preliminary objections of reply/comments is incorrect, misconceived. Denied. No notice is served upon the appellant. Appellant has been condemned unheard. Article 10-A of the Constitution of Pakistan 1973 holds that every person has a right to fair trial and due process. Audi Alteram Partem is well enshrined in our jurisprudence. As per 1997 SCMR 1552, even if a probationer is to be terminated for certain allegations, then holding of proper departmental proceedings would be mandatory (**Copy of the judgment reported in 1997 SCMR 1552 is attached as Annexure R-1**) The relevant Para is reproduced as under:

“7. Without going into the controversy, as to whether the respondent's claim that he was a permanent employee, we may observe that there is a marked distinction between simpliciter termination of services in accordance with the terms of appointment and the termination of services on the ground of misconduct. There is no doubt that if a person is employed on contract basis and if the terms of employment provide the manner of termination of his services, the same can be terminated in terms thereof. However, if a person is to be condemned for misconduct, in that event, even if he is a temporary employee or a person employed on contract basis or a probationer, he is entitled to a fair opportunity to clear his position, which means that there should be a regular enquiry in terms of the Efficiency and Discipline Rules before condemning him for the alleged misconduct...”

Similarly, in PLD 1974 SC 393, the Supreme Court of Pakistan has held as under: (**Copy of the judgment reported in PLD 1974 SC 393 is attached as Annexure R-2**)

“...In my opinion, if the service of a probationer is terminated on the ground of unsatisfactory work that will not amount to dismissal or removal from service, such termination will be in terms of the contract or the rules made by the Government but if the service of a probationer is terminated on the ground of misconduct that will amount to removal or dismissal, it will be a stigma in his favour. In the last mentioned case, the probationer will be protected by the provisions of Article 177 of the Constitution of 1962 and

will be entitled to a show-cause notice and a proper enquiry against him must be made....”

In another identical case, reported in 2001 SCMR 1566, the Honorable Supreme Court of Pakistan has held as under: (Copy of the judgment reported in 2001 SCMR 1566 is attached as Annexure R-3)

“4. In view of the law laid down by this Court in the above judgment we are not inclined to comment on the merits of the case as we are of the opinion that in terms of allegations pertaining to misconduct of appellants it was, incumbent upon WAPDA to have conducted regular enquiry against appellant after adopting procedure laid down in Rule 5 of Pakistan WAPDA Employees (Efficiency and Discipline) Rules, 1978 because we have already, held in the judgment cited hereinabove that when an employee has to be removed on the basis of misconduct allegedly committed by him he deserved fair opportunity to defend himself because if for such reasons he is dismissed from service then for all the times to come he carries a stigma of misconduct with him....”

In another identical case, reported in 2014 SCMR 1263, it is held by the Honourable Supreme Court of Pakistan as under: (Copy of the judgment reported in 2014 SCMR 1263 is attached as Annexure R-4)

“...The appellant submitted his reply dated 8-9-2007, in which he has denied the allegations made in the show cause notice. In the office order dated 7-11-2007 the University Syndicate has proceeded to pass the Resolution No. Syn-13.15 which has already been reproduced above, which clearly shows that the service of the appellant has been terminated as sequel to the show cause notice and its reply being found unsatisfactory. There being a definite allegation of corruption and malpractice against the appellant in the show cause notice and his services being terminated on that account, in our view even though the petitioner being a probationer, his service could not have been terminated without holding a full fledged enquiry in which the appellant would have opportunity to defend himself on the allegations made against him in the show-cause notice. Such is the state of law and reference in this regard is made to the cases of Muhammad Amjad (supra), Zahoor Ahmed (supra) and Muhammad Siddiq Javaid Chaudhry (supra)...”

In case titled as Muhammad Asad Ullah Siddique versus Registrar Lahore High Court reported in 2014 PLC (C.S) 1194, the Punjab Subordinate Judiciary Service Tribunal has held as under: (Copy of the judgment reported in 2014 PLC (C.S) 1194 is attached as Annexure R-5)

“....In this case since the serious allegation of misconduct was pending inquiry against the appellant therefore in view of the above quoted dictums laid down by the Hon'ble apex Court appellant's termination even during period of probation could not be ordered without finding truth of the allegation by providing an opportunity of hearing to the appellant through due process of law. Needless to say that right of due process and fair trial is fundamental right of each and every citizen of this country duly safeguarded and

guaranteed under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 which cannot be denied in any case."

In case titled as Nadeem Asghar Nadeem versus Province of the Punjab reported in 2015 CLC 1509, the Lahore High Court has held as under: **(Copy of the judgment reported in 2015 CLC 1509 is attached as Annexure R-6)**

"29. For the above reasons it is held as follows:---

- A. In the light of Article 10A read with Articles 4, 9, 14 and 25 of the Constitution, section 10(1)(i) of the Punjab Civil Servants Act, 1974 is read down, to the extent, that in cases where termination of a probationer is on the grounds of misconduct, inefficiency, corruption, etc prior notice is mandatory and is required to be issued to the probationer.
- B. Where the probationer has failed to meet the eligibility requirements of a departmental examination or in service training course, the probationer can be terminated without notice, but any such termination order must carry reasons for termination.
- C. In case the probationer has passed the eligibility criteria and has been found liable for misconduct, inefficiency or corruption, the competent authority does not have a choice to opt for termination simpliciter by withholding the real reason for termination and must issue a reasoned termination order..."

The gist of the afore-referred judgments is that if a civil servant is to be stigmatized and charged for misconduct, then holding of regular inquiry is mandatory as per Article 10A of the Constitution of Pakistan 1973. No one can be condemned unheard even if a probationer or temporary or contractual employee.

ON FACTS:

- Para 1** That Para No.1 of the service appeal is admitted as correct by the respondents.
- Para 2** That Para No 2 of the service appeal is admitted as correct by the respondents to the extent of possessing driver's license. The remaining Para 2 of the comments/reply is incorrect. Denied. Appellant has duly passed driving test conducted by Khyber Pakhtunkhwa Transport & Transit department and is issued a driving license after passing the driving test as well as the written traffic signal test. Even otherwise, appellant's driving skills were tested at the time of appointment and upon successfully driving test conducted by the appointing authority, appellant is appointed as Driver (BPS-6) vide appointment 31.03.2022.
- Para 3** That Para No 3 of the service appeal is admitted as correct by the respondents.
- Para 4** That Para No 4 of the service appeal is correct and that of reply/comments is incorrect. Denied specifically. The allegations

leveled against the appellant are false, wrong, incorrect and denied vehemently. No inquiry has been conducted and there is no evidence available to link the appellant with the charges leveled against the appellant. Notice (attached as Annexure B with comments) has never been served upon the appellant. Even otherwise, such notice cannot be a substitute to regular inquiry. There has never been any complaint against the appellant and there is no complaint in writing. Even if it is presumed for the sake of argument that there was any complaint (although not admitted), the appellant should have given an opportunity of defense and cross-examining any complainant. Appellant has never been called for personal hearing and never heard as evident from the impugned termination letter and the defense of the appellant has been seriously jeopardized. Moreover, respondent no 1 was taking the duty of cook from the appellant at his official residence and appellant has never been made to drive any car despite being appointed as Driver (BPS-6).

- Para 5** That Para No 5 of the service appeal is admitted as correct to the extent of reception of salaries, rest of the Para of the comments/reply is incorrect, Denied.
- Para 6** That Para No 6 of the service appeal is correct and that of comments/reply is incorrect, misconceived. Denied.
- Para 7** That Para No 7 of the service appeal is not denied hence amounts to admission
- Para 8** That Para No 8 of the service appeal is correct and that of comments/reply is incorrect, misconceived. Denied.

ON GROUNDS:

- A** That ground A of the service appeal is correct and that of comments/reply is incorrect. Denied. The law as laid down by the Honorable Supreme Court of Pakistan as well as Tribunals and High Court as reproduced in the reply to preliminary objections clearly states that holding of regular inquiry even in case of probationer is mandatory in case of "stigmatizing" his career. Section 11 of the KP Civil Servant Act 1973 is only applicable in cases of termination simpliciter whereas in the instant case appellant has been stigmatized by leveling serious allegations against him and therefore holding of regular inquiry was mandatory. Even otherwise, the appointment order signed by respondent no 1 clearly states that service of the appellant will be governed by KP Government Servants (E&D) Rules 2011 and then the respondent no 1 himself didn't adhere to his own condition laid down in the appointment. Condition no vi of the appointment order is reproduced as under:

"vi. He will be governed by the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and the Khyber Pakhtunkhwa, Government Servants Conduct Rules 1987 and any other instructions which may be issue by the Competent Authority from time to time."

- B** That ground B of the service appeal is not denied hence amounts to admission.

- C That ground C of the service appeal is correct and that of comments/reply is incorrect. Denied. No procedure at all has been followed and all provisions of the KP E&D Rules 2011 have been blatantly violated thereby providing no opportunity of defense to the appellant in violation of fundamental right to fair trial and due process as enshrined in Article 10A of the Constitution of Pakistan 1973.
- D-F That grounds D to F of the service appeal are correct and that of comments/reply are incorrect. Denied. Probationer as held by the Honorable Supreme Court is also entitled to regular inquiry.
- G That ground G of the service appeal is correct and that of comments/reply is incorrect. Denied. Appellant is a qualified and experienced driver and duly appointed after passing the driving test.
- H-Q That grounds H to Q of the service appeal are correct and that of comments are incorrect. Denied. The probation period of the appellant was for a period of one year and the respondent no 1 without waiting for the completion of the probation period passed the impugned order in a hurry in a short span of 07 months only. The respondent no 1 neither waited for the expiry of the probation period and was in a hurry to pass the impugn order without resorting to any procedure as laid down in KP E&D Rules 2011 which is a glaring illegality and the impugned order is liable to be set aside on this score alone. Appellant has been stigmatized for no fault and without affording opportunity of defense and therefore the impugned order is illegal and liable to be set aside.

It is therefore humbly prayed that the service appeal may please be accepted as prayed for.

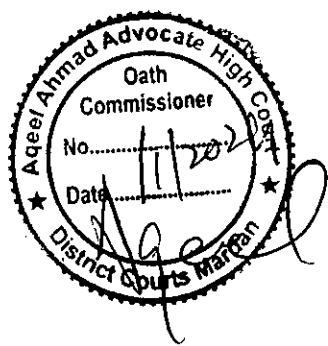
Dated. 15/11/2024

Amjad Ali

Appellant
 Through *Amjad Ali*
 Amjad Ali (Mardan)
 Advocate
 Supreme Court of Pakistan

AFFIDAVIT

I, **Aftab Ahmad S/O Gul Jamal R/O Ismail Abad Post Office Jamal Abad District Swabi (appellant)** do hereby solemnly affirm and declare that the contents of the **replication** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.



Amjad Ali
 Deponent

1997 S C M R 1552

[Supreme Court of Pakistan]

Present: Ajmal Mian, Actg, CJ., Irshad Hasan Khan and , Nasir Aslam Zahid, JJ

THE SECRETARY, GOVERNMENT OF THE PUNJAB, through Secretary, Health Department, Lahore and others--Petitioners

versus

RIAZ-UL-HAQ---Respondent

Civil Appeal No. 1428 of 1995, decided on 5th June, 1997.

(On appeal from the judgment dated 30-11-1994 of the Punjab Service Tribunal, Lahore, passed in Appeal No.657 of 1992).

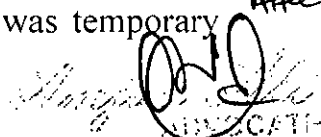
(a) Punjab Civil Servants Act (VIII of 1974)---

----S. 10(3)---Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, R. 7---Constitution of Pakistan (1973), Art. 212(3)---Misconduct---Temporary employee engaged on contract---Termination of service of employee on ground of misconduct and that his performance was not found satisfactory and that he failed to prove his innocence---Leave to appeal was granted to consider, as to whether employee's services could be terminated under S.10(3), Punjab Civil Servants Act, 1974 by serving him 30 days' notice as he was temporary employee.

(b) Civil service---

---- Termination of service---Misconduct---Civil servant's services were on temporary basis liable to be terminated on 30 days' notice or pay in lieu thereof on either side---Services of civil servant were to be governed by statute and Rules/Instructions/Regulations framed thereunder---If a person is employed on contract basis and terms of employment provide the manner of termination of his services, the same can be terminated in terms thereof---Where, however, a person is to be condemned for misconduct, in that event, even if he is a temporary employee or a person employed on contract basis or probationer, he is entitled to a fair opportunity to clear his position which means that there should be a regular enquiry in terms of

Aux (R-1) (6)

Attest

REGISTRAR
SUPREME COURT

Efficiency and Discipline Rules before condemning him for the alleged misconduct.

7

Muhammad Siddiq Javaid Chaudhry v. The Government of West Pakistan PLD 1974 SC 393 and Pakistan (Punjab Province) v. Riaz Ali Khan 1982 SCMR 770 ref.

(c) Civil service---

---Termination of service---Misconduct---Regular enquiry---If an accused civil servant/employee is charged, with misconduct of the nature which cannot be proved without holding of regular enquiry, the removal or dismissal from service of a civil servant on the basis of summary enquiry is not sustainable in law---Charges of defiance of orders of superiors; being rude to his colleagues and having concealed the factum of having a job in another department, which the civil servant had denied involved factual controversy which could not be resolved without holding regular enquiry and services in such a situation could not be terminated without such enquiry.

Deputy Inspector-General of Police, Lahore and others v. Anis-urRehman Khan PLD 1985 SC 134; Alamgir v. Divisional Forest Officer, Multan and others 1993 SCMR 603; Jan Muhammad v. The General Manager, Karachi Telecommunication Region, Karachi and another 1993 SCMR 1440; Nawab Khan and another v. Government of Pakistan through Secretary, Ministry of Defence, Rawalpindi and others PLD 1994 SC 222 and Ghulam Muhammad Khan v. Prime Minister of Pakistan and others 1996 PLC (C.S.) 868 ref.

Ehsan Sabri, Assistant Advocate-General, Punjab for Petitioners.

Malik Amjad Pervez, Advocate Supreme Court for Respondent.

Date of hearing: 5th June, 1997.

ORDER

Amjad Pervez
Amjad Pervez
ADVOCATE
SUPREME COURT

AJMAL MIAN, ACTG. C.J.---This is an appeal with the leave to this Court against the judgment dated 30-11-1994 of the Punjab Service Tribunal, Lahore, hereinafter referred to as the Tribunal, passed in Appeal No.657 of 1992, filed by the respondent against the termination of his service by an order dated 29-5-1991 while working as a Stenographer in

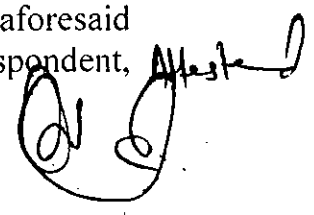
the Office of the Project Director, Paediatric Hospital/Institute, Lahore, hereinafter referred to as the Institute, allowing the same as follows:--

8

"18. Section 10(3) *ibid* prescribes 30 days' notice and not 10 days. Obviously it did not meet the requirement. In any event section 10 had no application inasmuch as it was not an *ad hoc* appointment. Parties were agreed that it was regular employment though they differed as to the precise date of joining it on the part of the appellant. Thus, 10 days' notice did not improve the situation.

19. As a result the appeal is allowed. The impugned order is set aside and the appellant is re-instated with back benefits. "

2. The brief facts are that the respondent was employed on 26-4-1986 on contract basis by the Health Department at the behest of the Project Director of the Institute. It seems that at the time of the respondent's induction into service, there were no rules to govern terms and conditions of the staff of the Institute. The rules were subsequently framed, which came into force with effect from 28-10-1988. It appears that after the framing the aforesaid rules, the respondent's services were regularised by an order dated 8-1-1989 retrospectively i.e. from the date when he joined the Institute on 26-4-1986. It was also stated in the aforementioned order of regularisation that like others, the respondent would also be treated as a civil servant and governed by the rules applicable to them. It further seems that the respondent's services were terminated by an order dated 18-5-1991. However, the above termination order was not acted upon and the respondent was served with a show-cause notice, calling upon him to explain as to why he observed local holidays without permission and why he used to leave the office without permission while his officers were still working in the office and thereby committed an act of misconduct and indiscipline. He was required to submit his reply within 10 days. It appears that before the expiry of above period of 10 days, the department served another notice dated 22-5-1991 upon the respondent, further charging him with defiance of orders of the superiors, being rude to his colleagues, having concealed the factum of having a job of a Stenographer with the Board of Excellence of Education by making a formal application there etc. It seems that the respondent refuted all these allegations. He also expressed his apprehension that he would not get justice from appellant No.4 Project Director of the Institute and requested that an Enquiry Officer might be appointed to look into the charges. It was further asserted by him that he was no more on probation and he had become a regular incumbent, whose services could not have been terminated especially by aforesaid order dated 18-5-1991. On receiving the above reply from the respondent,

Alleged


the Project Director of the Institute (i.e. appellant No.4) by his aforesaid order dated 29-5-1991 terminated the respondent's services. After that the respondent filed a departmental appeal and then approached the Tribunal through the aforementioned appeal, which was upheld in the above terms. Thereupon, the appellants i.e. the Government of the Punjab and other officials, filed a petition for leave to appeal, which was granted to consider, as to whether the respondent's services could be terminated under section 10(3) of the Punjab Civil Servants Act, 1974, hereinafter referred to as the Act, by serving 30 days notice as he was a temporary employee.

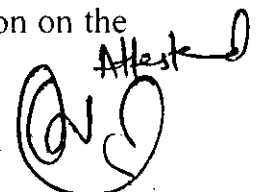
3. In support of the above appeal Mr. Ehsan Sabri, learned Assistant Advocate-General, Punjab, has vehemently contended that since the respondent was employed on contract basis and as he was a temporary employee, his services could have been terminated by serving 30 days' notice and, therefore, the respondent, at the most, was entitled to one month's salary in lieu of the notice period. '

On the other hand, Malik Amjad Pervaiz, learned Advocate Supreme Court for the respondent, has strongly urged that factually the respondent was a permanent employee of the Institute as he was inducted against a permanent post and his services were regularised after the enforcement of the rules with effect from 28-10-1988. His further submission is that even if it is to be held that the respondent was a temporary employee of the Institute, his services could not have been terminated under section 10 of the Act read with Rule 7 of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, hereinafter referred to as the Rules, particularly by condemning the respondent without holding an enquiry.

4. In order to appreciate the respective contentions of the learned counsel for the parties, it may be pertinent to reproduce the above termination order dated 29-5-1991, which reads as under:--

"Whereas Mr. Riaz ul Haq Stenographer of this office was served with Memo. No.PF/4182/PH & I, dated May 18, 1991 to put up his defence in writing or otherwise as to why his services may not be terminated during probation under section 10 of the Punjab Civil Servants Act, 1974 read with Rules 7 of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974 on account of his work and conduct during the probation period being not satisfactory.

And whereas, he submitted a representation dated 26-5-1991 in this behalf which was given due consideration and he was also heard in person on the same day.

Attest


And whereas, the representation of the official having not been found satisfactory and he having not been able to prove his innocence in this behalf, therefore, in exercise of the powers conferred under section 10 of the Punjab Civil Servants, 1974, I hereby terminate his services with immediate effect in the public interest. "

A perusal of the above order indicates that the respondent's services were terminated on the ground that his performance was not found satisfactory and that he failed to prove his innocence. Reference has also been made to the show-cause notice and the reply submitted by the respondent, and it has been stated that the respondent's reply was given due consideration and was also afforded personal hearing.

5. It will not be out of context to refer to the aforesaid order dated 8-1-1989, whereby the respondent's services were regularised. The above, order is at pages 35 and 36 of the paper book, which indicates that the respondent's services were regularised on the following terms and conditions:-

"(1) that your service will be governed by the provisions of the Punjab Civil Servants Act, 1974 and all Rules/Regulations/Instructions framed thereunder;

(2) that you will be required to undergo a medical examination if not already done on your first entry into Government service, and your appointment will be subject to the conditions that you are declared medically fit by the competent medical authority.

(3) that your appointment will be subject to verification of your character and antecedents to the satisfaction of the Government.

(4) that your appointment in the Paediatric Hospital/Institute will be on temporary basis liable to terminate on 30 days notice or pay in lieu thereof on either side.

(5) that you will be governed by such rules and orders relating to leave, T.A., Medical Attendance, Pay etc. as may be issued by the Government from time to time for the category of Government servants to which you will belong."

6. It is evident from the abovequoted terms and conditions that the respondent's services were to be governed by the provisions of the Act and

[Handwritten Signature]
ADVOCATE

of the Rules/Regulations/Instructions framed thereunder. It is also manifest that the respondent's services were on temporary basis, which were liable to be terminated on 30 days' notice or pay in lieu thereof on either side. (11)

7. Without going into the controversy, as to whether the respondent's claim that he was a permanent employee, we may observe that there is a marked distinction between simpliciter termination of services in accordance with the terms of appointment and the termination of services on the ground of misconduct. There is no doubt that if a person is employed on contract basis and if the terms of employment provide the manner of termination of his services, the same can be terminated in terms thereof. However, if a person is to be condemned for misconduct, in that event, even if he is a temporary employee or a person employed on contract basis or a probationer, he is entitled to a fair opportunity to clear his position, which means that there should be a regular enquiry in terms of the Efficiency and Discipline Rules before condemning him for the alleged misconduct. In this regard, reliance has been placed by the learned counsel for the respondent on the case of Muhammad Siddiq Javaid Chaudhry v. The Government of West Pakistan (PLD 1974 SC 393), in which Waheeduddin Ahmad, J. has succinctly brought out a distinction between termination of services of a probationer on the ground of unsatisfactory performance and the ground of misconduct as follows:--

"In the light of the above discussion, it appears to me that a probationer is a person who is taken in service subject to the condition that it will attain a sure footing only if during the period that he is on probation he shows that he is a fit person to be retained in service. I agree with the view expressed in Muhammad Afzal Khan v. The Superintendent of Police, Montgomery and Riaz Ali Khan v. Pakistan, that a person who is on probation is subject to all checks to which a permanent servant is subject. He cannot, for example, refuse to obey orders, keep his own hours of duty, or indulge in any malpractice. In my opinion, if the service of a probationer is terminated on the ground of unsatisfactory work that will not amount to dismissal or removal from service, such termination will be in terms of the contract or the rules made by the Government but if the service of a probationer is terminated on the ground of misconduct that will amount to removal or dismissal. It will be a stigma in his favour. In the last-mentioned case, the probationer will be protected by the provisions of Article 177 of the Constitution of 1962 and will be entitled to a show-cause notice and a proper enquiry against him must be made. "

8. The above view was reiterated by this Court in the case of Pakistan (Punjab Province) v. Riaz Ali Khan (1982 SCMR 770) as under:--

Attested
[Signature]
ADVOCATE
SUPREME COURT

"From the pleadings of the parties it is clear that there was no latent stigma of misconduct but the sole ground of termination of service was his unsatisfactory work which was also apparent from the explanation submitted by the respondent. Therefore, the result of this appeal is concluded by a judgment of this Court reported as Muhammad Siddiq Javaid Chaudhry v. The Government of West Pakistan (PLD 1974 SC 393). It was observed in this case at page 401 that a probationer is taken in service subject to the condition that it will attain a sure footing only if during the period that he is on probation he shows that he is a fit person to be retained in service; and if the service of a probationer is terminated on the ground of unsatisfactory work, it will not amount to dismissal or removal from service. Such termination will be in accordance with the terms of the contract or the Rules made by the Government in that behalf. However, a distinction was drawn that if such termination was on the ground of misconduct then it will be subject to the Constitutional protection which is not the case here."

9. We respectfully agree with the proposition of law as enunciated in the above reports. The same is in line with the view which we are inclined to take and which has been highlighted hereinabove.

It may be observed that in the present case, inter alia, the respondent was charged with defiance of the orders of his superiors, being rude to his colleagues, having concealed the factum of having a job of a Stenographer with the Board of Excellence of Education etc., which the respondent had denied and, therefore, there was a factual controversy which could not have been resolved without holding regular departmental disciplinary proceedings. In this regard, reference may be made to the following cases: --

- (i) Deputy Inspector-General of Police, Lahore and others v. Anis-ur Rehman Khan (PLD 1985 SC 134);
- (ii) Alamgir v. Divisional Forest Officer, Multan and others (1993 SCMR 603);
- (iii) Jan Muhammad v. The General Manager, Karachi Telecommunication Region, Karachi and another (1993 SCMR 1440);
- (iv) Nawab Khan and another v. Government of Pakistan through Secretary, Ministry of Defence, Rawalpindi and others (PLD 1994 SC 222); and

Attest
[Signature]

(v) Ghulam Muhammad Khan v. Prime Minister of Pakistan and others (1996 PLC (C.S.) 868);

In all the above reports, it has been held that if an accused civil servant/employee is charged with misconduct of the nature which cannot be proved without holding of a regular enquiry, the removal or dismissal from service of a civil servant on the basis of a summary enquiry is not sustainable in law. It will suffice to reproduce para. 5 from the last report, which reads as under:--

"5. It has been consistently held by this Court that there is a marked distinction between Rule 5 and Rule 6 of the Rules, inasmuch as under the former Rule, a regular inquiry can be dispensed with, whereas the latter Rule envisages conducting of regular inquiry which will necessitate the examination of witnesses in support of the charges brought against the accused civil servant, his right to cross-examine such witnesses and his right to produce evidence in rebuttal. The question, as to whether the charge of a particular misconduct needs holding of a regular inquiry or not, will depend on the nature of the alleged misconduct. If the nature of the alleged misconduct is such on which a finding of fact cannot be recorded without examining the witnesses in support of the charge or charges, the regular inquiry could not be dispensed with. Reference may be made in this behalf to the case of Nawab Khan and another v. Government of Pakistan through Secretary, Ministry of Defence, Rawalpindi and others (PLD 1994 SC 222)."

10. The above cases support the view of the Tribunal that the respondent's services could not have been terminated in the manner which was resorted to in the present case.

11. The upshot of the above discussion is that the instant appeal has no merits and the same is, accordingly, dismissed. However, there will be no order as to costs.

M.B.A./S-1/S
dismissed.

Appeal

Alastair
Alastair
ADVOCATE
SUPREME COURT

P L D 1974 Supreme Court 393

Aux (R-2)

Present Hamoodur Rahman, C. J., Waheeduddin Ahmad and Salahuddin Ahmed, JJ

(14)

C. A. No. 295 of 1969

MUHAMMAD SIDDIQ JAVAID CHAUDHRY-Appellant

versus

THE GOVERNMENT OF WEST PAKISTAN-Respondent

AND

C. A. No. 14 of 1970 .

ABDUL RASHID ABBAS I-Appellant

versus

SUPERINTENDENT OF POLICE, MUZAFFARGARH-Respondents
AND 2 OTHERS

AND

C. A. No. 97 of 1970

MUMTAZ HUSSAIN MALIK-Appellant


versus

THE GOVERNMENT OF WEST PAKISTAN-Respondent

Civil Appeals Nos. 295 of 1969, 14 and 97 of 1970, decided on 2nd September 1974.

(On appeal from the judgment and orders of the former High Court of West Pakistan, Lahore, in Writ Petitions Nos. 2096 of 1964, 1231 of 1965 and 2005 of 1965, dated the 31st January 1967 and 25th January 1967).

(a) Civil services--


ADVOCATE
SUPREME COURT

Probationer-Definition and liability of.

A probationer is a person who is taken in service subject to the condition that it will attain a sure footing only if during the period that he is on probation he shows that he is a fit person to be retained in service.

A person who is on probation is subject to all checks to which a permanent servant is subject. He cannot, for example, refuse to obey orders, keep his own hours of duty, or indulge in any malpractice.

Mohammad Naseem Ahmad and others v. Miss Azra Feroze Bakhat and others P L D 1968 S C 37 and Muhammad Afzal Khan v. Superintendent of Police, Montgomery and others P L D 1961 Lah. 808 ref.

(b) Constitution of Pakistan (1962)-

Art. 177-Termination of services-Show-cause notice-Probationer's service terminated on ground of unsatisfactory work-Such termination not dismissal or removal from service but within domain of contract or Rules made by Government-Services of probationer terminated on ground of misconduct-Such course amounts to removal or dismissal and probationer, being stigmatised, protected by Art. 177- Show-cause notice and proper inquiry against probationer-Necessary in such case.

If the service of a probationer is terminated on the ground of, unsatisfactory work that will not amount to dismissal or removal from service, such termination will be in term of the contract or the rules made by the Government but if the service of a probationer is terminated on the ground of misconduct that will amount to removal or dismissal. It will be a stigma in his favour. The probationer will be protected by the provisions of Article 177 of the Constitution of 1962 and will be entitled to a show-cause notice and a proper enquiry against him must be made.

The record showed that there were allegations against the appellant officers of corruption.

Held : In these circumstances, the order terminating their services amounted to removal and dismissal within the meaning of Article 177 and they were entitled to a show-cause notice under Article 177 of the Constitution of Pakistan (1962).

[Handwritten signature]
[Handwritten initials]

Riaz Ali Khan v. Pakistan P L D 1967 Lah. 491 ; Khawaja Ghulam Sarwar v. Pakistan through the General Manager, P. W. R., Lahore P L D 1962 S C 142 ; Abdul Majid Sheikh v. Mushafee Ahmad and others P L D 1965 S C 208 ; Muhammad Ajzal Khan v. Superintendent of Police, Montgomery and others P L D 1961 Lah. 808 ; Syed Nisar Ali v. The Secretary, Ministry of Health, Government of Pakistan and others P L D 1958 Kar. 360 ; The Federation of Pakistan v. Mrs. A. V. Isaacs, P L D 1956 S C (Pak.) 431; Noorul Hassan and others v. The Federation of Pakistan P L D 1956 S C (Pak.) 331 ; The Federation of Pakistan v. Raja Muhammad Afzal Khan P L D 1958 S C (Pak.) 258; Mohammad Mumtaz Khan v. Government of West Pakistan P L D 1968 S C 357 ; Muhammad Ashraf v. Dr. Arshad Malik, Chairman, District Family Planning Board, Sargodha 1970 S C M R 241 ; Federation of Pakistan v. Riaz Ali Khan P L D 1958 Lah. 22 ; Tasnim Ali Mir v. The Federation of Pakistan P L D 1959 Kar. 62 and Muhammad Naseem Ahmad and others v. Miss Azra Feroze Bakhat and others P L D 1968 S C 37 ref.

C. A. No. 295 of 1969

Abdus Salam, Advocate Supreme Court instructed by Ch. Khalil-ur-Rahman, Advocate-on-Record for Appellant.

Kamal Mustafa Bokhari, Assistant Advocate-General Punjab (R. S. Sidhwa, Advocate with him) instructed by Ijaz Ah, Advocate-on-Record for Respondents.

C. A. No. 14 of 1970

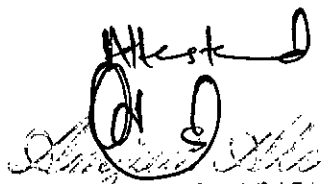
Muhammad Shafi Senior Advocate Supreme Court instructed by Sh. Abdul Karim, Advocate-on-Record for Appellant.

Kamal Mustafa Bokhari, Assistant Advocate-General Punjab (M. A. Bajwa, Advocate with him) instructed by Ijaz Ali, Advocate-on-Record for Respondents.

C. A. No. 97 of 1970

Fazle-Ghani, Senior Advocate Supreme Court instructed by Ejaz Ahmad Khan, Advocate-on-Record for Appellant.

Kamal Mustafa Bokhari, Assistant Advocate-General Punjab (R. S. Sidhwa, Advocate with him) instructed by Ijaz Ali, Advocate-on-Record for Respondent.

Attest

 ADVOCATE
 SUPREME COURT

Date of hearing :12th April 1974.

JUDGMENT

WAHEEDUDDIN AHMAD, J.-This judgment will dispose of Civil Appeals Nos. 295 of 1969, 14 of 1970 and 97 of 1970, in which a common question of law is involved.

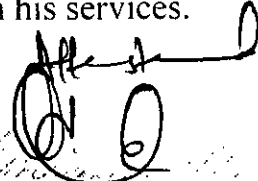
In Civil Appeal No. 295 of 1965, the appellant was appointed by letter dated the 25th September 1963, as Civil Judge in the West Pakistan Civil Service (Judicial Branch). He was to be considered on probation for a period of two years with effect from the date he actually resumed duty. He was also required to pass departmental examination prescribed in the West Pakistan Civil Services (Judicial Branch) Rules, 1962 and in case, he failed to do so, his services were liable to be terminated without notice. According to para. 7 of his appointment letter, he was governed by the Government Servants Conduct Rules and such other Rules as may have been or may be enforced by the Government in this behalf. The appellant joined service on the 9th November 1963. He passed the departmental examination which was notified in the official Gazette of 23rd June 1964 and 29th January 1965.

The services of the appellant were dispensed with on the 19th June 1965, under rule 8 of the West Pakistan Civil Services (Judicial Branch) Rules, 1962 on account of his work and conduct having been found unsatisfactory during the initial probationary period of two years. According to the service record of the appellant produced by the High Court, it appears that the allegation against him was that he was corrupt and he himself admitted that he gained a reputation for corruption. The relevant rule 8 is reproduced below :-

"Rule 8 : Probation.-(1) A person appointed to the service against a substantive vacancy shall remain on probation for a period of two years.

Explanation.-Officiating service and service spent on deputation to a corresponding or a higher post may be allowed to count towards the period of probation.

(2) If the work or conduct of a member of the service during the period of probation has been unsatisfactory, -Government may, notwithstanding that the period of probation has not expired, dispense with his services.

Waheeduddin Ahmad

 JUDGE
 High Court of West Pakistan

(3) On completion of the period of probation of member of the Service, Government may, subject to the provisions of sub-rule (4), confirm him in his appointment, or if his work or conduct has in the opinion of Government, not been satisfactory-

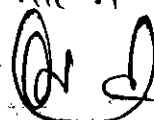
(a) dispense with his services; or

(b) extend the period of probation by a period not exceeding two years in all, and during or on the expiry of such period pass such orders as it could have passed during or on the expiry of the initial probationary period."

The appellant moved a petition before the Governor of West Pakistan, bringing to his notice the alleged injustice done to him. No. decision, however, was taken on it and no reply was sent. Thereafter, the appellant challenged the order of termination of his service under Article 98 of 1962 Constitution of Pakistan in the former High Court of West Pakistan, Lahore, in Writ Petition No. 1231 of 1965, on the ground that the appellant was entitled to protection of Article 177 of the Constitution and in so far, as no opportunity was afforded to him, his dismissal from service was without lawful authority. It was further pleaded that the provisions of natural justice has been violated. His writ petition along with Writ Petition No. 2096 of 1964, came up for hearing before a Division Bench of the former High Court of West Pakistan, Lahore and these petitions were dismissed by a single judgment dated the 31st January 1967, for the reasons stated in Writ Petition No. 2096 of 1964. The grievance of the appellant is that his case was not considered by the High Court and the High Court has mixed up his case with the case of Mumtaz Hussain Malik in the connected appeal.

The appellant challenged the order of the High Court in Civil Petition for Special Leave to Appeal No. 92 of 1967 and leave was granted to him to consider the question whether the order terminating his services could not have been made without a prior show-cause notice as held in the case of Riaz Ali Khan v. Pakistan (P L D 1967 Lah. 491), that a probationer has the same right as a permanent member of a service. Leave was granted to consider the correctness of this decision.

In Civil Appeal No. 14 of 1970, the appellant was approved as candidate for appointment as Assistant Sub-Inspector of Police on three years' probation on the 1st March 1962, with the approval of the Deputy Inspector-General of Police, Multan Range. His appointment was made by the Superintendent of Police, Muzaffargarh, vide Gazette Notification No.

Attested


5261 dated the 24th March 1962. He was sent to the Police Training Institute for the completion of Inter-Class Course and was declared successful. He was posted for the completion of 'D' Course to Police Station, Khan Garh. During his posting at Police Station, Khan Garh, a complaint was received against him by S. H. O. Khan Garh who conducted an inquiry into the allegations. Thereafter, the respondent deputed the District Inspector, Alipur, to, probe into the allegations against the appellant. The said Officer reported that the appellant has demanded Rs. 40 as illegal gratification from Ghulam Sarwar and Khuda Bakhsh for showing them favour in his Daily Diary Report No. 14 dated the 15th June 1965. It was alleged that the appellant summoned these persons knowing that he was taking cognizance of a non-cognizable offence. The appellant was charge-sheeted and a summary of allegations against him was sent to him. He was called upon to show cause as to why major penalty under Government (Efficiency and Discipline) Rules, 1960, may not be imposed against him. The appellant submitted his reply on the 26th February 1965. After considering the reply, the appellant was discharged from service vide order dated the 27th February 1965, on the ground that he was not likely to make a good Police Officer and there were complaints of corruption and misconduct against him. The appellant filed an appeal against this order before the Deputy Inspector-General of Police which was dismissed on the 13th July 1965. He took up the matter in revision before the Additional Inspector-General of Police but was unsuccessful there also.

Thereafter, the appellant filed Writ Petition No. 2005 of 1965 in the former High Court of West Pakistan, Lahore, which was dismissed by a Division Bench on the 25th January 1967. The appellant filed Civil Petition for Special Leave to Appeal No. 148 of 1967 and leave was granted to him to consider the question whether a probationer has an assurance of continuance in service equal to those of a permanent employee and cannot be removed on a mere declaration of unsatisfactory service.

In Civil Appeal No. 97 of 1970, the appellant was appointed Civil Judge in the West Pakistan Civil Services (Judicial Branch), by letter dated the 27th July 1961. He took charge on the 1st September 1961. He was to be considered on probation for a period of two years. He was also required to pass departmental examination, prescribed in the West Pakistan Civil Services (Judicial Branch) Rules, 1962 and if he fails to do so, his services were liable to be terminated without notice. Under Clause VII of the letter of his appointment, the appellant was governed by the Government Servants Conduct Rules and such other Rules as may have been or may be enforced by the Government in this behalf. Under Clause IX of the letter of

[Handwritten signature and stamp]

appointment, his services were liable to be terminated on the following grounds :-

- (a) During the period of probation or on its conclusion or even thereafter without notice, if your work or conduct is proved to be unsatisfactory or if you fail to pass the departmental examination within the prescribed period,
- (b) in circumstances other than those mentioned in (a) above, without assigning any cause, by one month's notice from you to Government or vice versa provided that one month's pay may be forfeited or granted, as the case may be, in lieu of notice.

The services of the appellant were dispensed with under rule 8 of the West Pakistan Civil Services (Judicial Branch) Rules, 1962, on account of his work and conduct have been found unsatisfactory during the period of probation. The remarks made in his service record show that he was indifferent. He was unpunctual and difficult to work with and he was reputed to be corrupt. Relevant rule 8 has already been reproduced while giving the facts in Civil Appeal No. 295 of 1969. The appellant challenged the order of termination of his service dated the 18th August 1964 by a Writ Petition No. 2096 of 1964 in the former High Court of West Pakistan, Lahore. The writ petition. was dismissed by a Division Bench of the High Court on the 31st January 1967, on the ground that a probationer has no constitutional protection.

The appellant filed Civil Petition for Special Leave to Appeal No. 124 of 1967 which was dismissed on the 19th April 1967. On a review petition, this Court granted leave to the appellant on the 30th June 1967, to consider the correctness of the decision of the High Court in Riaz Ali Khan v. Pakistan (P L D 1967 L ah. 491).

The learned counsel for the appellants have contended that a probationer is also entitled to the safeguard of the show-cause notice guaranteed against dismissal or removal from service under Article 177 of the Constitution of Pakistan, 1962. They further contended that just as a person, who is a temporary employee, is also in service or holds the civil post, similarly a probationer is also in civil service and holds a civil post. It is also contended that any rule or term of contract which is contrary to the constitutional guarantee will not apply to a probationer. In support of their contention. the learned counsel for the appellants have relied on Riaz Ali Khan v. Pakistan and Khawaja Ghulam Sarwar v. Pakistan through the General Manager, P. W R., Lahore (P L D 1962 S C 142). In the second

Handwritten signature and initials.

case, it was held that the termination of a Railway employee's employment, by notice, purporting to issue under a term in his contract of employment, where the facts showed that he had incurred the displeasure of his superior officers, but without a show-cause notice, was a violation of the guarantee of employment conveyed by section 240 (3) of the Act of 1935. This case was further considered in Abdul Majid Sheikh v. Mushafee Ahmad and others (PLD1965SC208). It was held in that case that the decision in Ghulam Sarwar's case was also applicable to an employee holding an appointment, indefinite in duration, although not in a substantive capacity, but expressly described as temporary. In the case of Riaz All Khan v. Pakistan, it was held as under :-

"Just as a person who is a temporary employee is also in service, or holds a civil post, similarly a probationer is also in civil service and holds a civil post. He is equally subject to all checks to which a permanent Government servant is subject. He cannot, for example, refuse to obey orders, keep his own hours of duty, or indulge in any malpractice. If his termination of service is not a termination simpliciter in the sense in which termination is used as distinguished from dismissal or removal, but tantamounts to removal and dismissal, then it cannot be brought about without the formality of a showcause notice, and he too is eligible to a show-cause notice. As for example, where it is due to his conduct of the employee then the agreement or appointment letter, which placed him under probation, as we have stated earlier, will not be permitted to contract out of the provisions of the constitution, so as to say that as you are on a probation, therefore, even though you are being dismissed or removed from service, you will not be given a showcause notice. This will be allowing to do that indirectly which the Constitution has prohibited to be done directly."

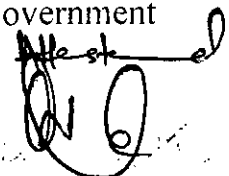
The learned counsel for the appellants also referred to the cases of Muhammad Afzal Khan v. Superintendent of Police, Montgomery and others (P L D 1961 Lah. 808) and Syed Nisar Ali v. The Secretary, Ministry of Health, Government of Pakistan and others (P L D 1958 Kar. 360). In the last mentioned case, it was held that in a case of probationer if the Department wants to terminate the services of the Government servant then the principles of natural justice should be followed. In the case of Muhammad Afzal Khan v. Superintendent of Police, Montgomery, it was held as under :-

"The position of a person who has been taken on probation is that he is in service but his service is subject to the condition that it will attain a sure footing only if during the period that he is on probation he shows that he

is a fit person to be retained in service. A person who is on probation is subject to all checks to which a permanent servant is subject. He cannot, for example, refuse to obey orders, keep his own hours of duty, or indulge in any malpractice.

The termination of the services of a Government servant, for the purposes of the provisions making an enquiry necessary, can be divided into four categories, namely, dismissal from service, removal from service, termination of service in terms of the contract between the Government and the employee and the termination of service during the period of probation. The terms "dismissal" and "removal from service" have attained technical meanings for the purposes of public services. Dismissal from service, which is invariably the result of proved misconduct, ordinarily debars the person dismissed from future employment under Government. Termination of service in terms of the contract though it may have resulted from a fault of the employee does not amount to removal or dismissal from service unless the order terminating the service mentions that the terms of the contract were enforced because the employee had been guilty of misconduct. Termination of service during the period of probation does not amount to either removal or dismissal from service unless the order terminating the service mentions that it was terminated because of misconduct of the employee."

Mr. Kamal Mustafa Bokhari, learned Assistant Advocate-General, Punjab for the respondents, has referred to the cases of *The Federation of Pakistan v. Mrs. A. V. Isaac* (P L D 1956 S C (Pak.) 431), *Noorul Hassan and others v. The Federation of Pakistan* (P L D 1956 S C (Pak.) 331), *The Federation of Pakistan v. Raja Mohammad Afzal Khan* (P L D 1958 S C (Pak.) 258), *Mohammad Mumtaz Khan v. Government of West Pakistan* (P L D 1968 S C 357) and *Mohammad Ashraf v. Dr. Arshad Malik, Chairman, District Family Planning Board, Sargodha* (1970 S C M R 241). All these cases are under section 240 of the Government of India Act. The trend of decision of some of these cases is that if a temporary Government servant is discharged from service on account of misconduct, it was an order of dismissal within the meaning of section 240, Government of India Act and that if the opportunity required by that section was not given to him the order of dismissal would be void, irrespective of whether the respondent was permanent or temporary employee. In the case of *Raja Mohammad Afzal Khan*, it was held that the first tentative appointment of the Government servant concerned, was "subject to verification of character and antecedents" and there was a condition that the service could be terminated on 15 days' notice by either side. As it was, Government

Attest


made enquiries and were not satisfied as to "character and antecedents" of the incumbent, they, therefore, terminated his service "with immediate effect" and directed that he should be paid 15 days' pay in lieu of notice. It was held that the establishment of a satisfactory character and satisfactory antecedents was a condition sine qua non to the completion of the contract of employment. In the case of Mohammad Mumtaz Khan, cited above, it was held that a Government servant was appointed in a temporary capacity to class I post on specified terms, two of which were: (1) although temporary, the post was likely to continue indefinitely, and (2) the appointment was liable to be terminated at any time on a month's notice on either side. The employee failed to give a satisfactory account of himself during the brief tenure of his office in the new post; The Government terminated his appointment on one month's notice and thereafter he was taken back in his previous post. The employee in due course filed a writ petition. It was contended that because his employment was in a post which though temporary was to continue for an indefinite period, he could not be regarded as a temporary officer and his services could not, therefore, be terminated by notice. This Court held that the employee Class I post contained no element of permanency for the post itself was temporary and he had been appointed to it in a temporary capacity. His removal from that post was effected in an entirely straightforward manner on the basis that his work showed that he was inadequate to the requirement of the post. It was further observed as under:

"He had been informed of this at an intermediate stage, and given an opportunity to show better work over a period of three months. On account of his failure to do better, his services were terminated in the Class I appointment, and he was restored to his original Class II appointment for which at the state of his efficiency had been reached, he appears to have been suitable. His removal was in no sense a punishment. It represented acceptance of the fact that a mistake had been made in appointing him to a post for the requirements of which he did not possess the necessary ability, and the conclusion to that effect was not Leached hastily or on any ulterior ground, but after actual trial and issue of a notice to the appellant that he was under special report for the purpose of judging whether he could prove his adequacy for the post. Therefore, nothing in the nature of a punishment was involved in his removal."

In the case of Mohammad Ashraf v. Dr. Arshad Malik, Chairman, District Family Planning Board, Sargodha, it was held that persons appointed purely on temporary basis as Supervisors in Family Planning Department removed for insufficiency and dereliction of duties

Attest
[Signature]

constitutional protection under Article 177 was not available to such employees in view of provisions of Article 179 of the Constitution of 1962.

It appears to me that the real question for decision in this case is what is the position of a probationer in service. This aspect of the question was considered in the cases of Federation of Pakistan v. Riaz Ali Khan (P L D 1958 Lah. 22), Tasnim Ali Mir v. The Federation of Pakistan (P L D 1959 Kar. 62), Riaz Ali Khan v. Pakistan (P L D 1967 Lah. 491) and Mohammad Afzal Khan v. Superintendent of Police, Montgomery and others. In the former two decisions, it was held that in the case of a probationer the question as to whether he is or is not to be employed has not yet been finally decided whereas in the case of a temporary employee the question of employment has certainly been decided. Only he is not a permanent employee and the period of his employment is regulated by his agreement. It was further held that the question of removal or dismissal arises only when the question whether a person is to be employed has been finally decided and secondly it is only where the order of discharge by itself finds a person to be blameworthy or deficient that it can be regarded as removal or dismissal. To such a removal or dismissal a stigma attaches, but if all that has happened is that the real reason of discharge is the unsatisfactory work of an employee but the Government does not proceed on the basis that he is guilty or deficient and simply terminates his services in accordance with the terms of his agreement of service, that would not be a removal. Contrary view was taken in the latter two decisions which have been cited earlier. The position of a probationer was also considered in Mohammad Naseem Ahmad and others v. Miss Azra Feroze Bakht and others (P L D 1968 S C 37). Hamoodur Rahman, J. one of us (as he then was), has, in this connection, observed as under:-

"Where conditions are prescribed for confirmation an officer remains a "probationer" until he has fulfilled those conditions and cannot be treated as a person substantively appointed to a permanent post. Nor has he any right to be confirmed from the date of his original appointment, no matter when he qualifies for confirmation. Although in the normal course, if there is nothing against the officer concerned, the general rule followed appears to be that he is confirmed from the date of his original appointment provided a permanent post is available. But it would appear from the Establishment Manual, Government of Pakistan, Volume I, that this is in the discretion of Government and that it has on occasions laid down a different rule or procedure."

It was further observed as under:-

Attested
[Signature]
SUPERIOR COURT

"There is no rule or practice of general application with regard to confirmations and the Government has reserved to itself the right to determine how, when, in what manner and with what effect from what date confirmations will be made. There is also no unreasonableness in this, for it is only the employer who can say when a probationer is to be considered to have become fit for permanent retention according to his requirements and until then the probationer can have no lien to or right of retention in the service. But all other conditions being fulfilled confirmation can and does in most cases relate back to the date of original induction into service."

In the light of the above discussion, it appears to me that a probationer is a person who is taken in service subject to the condition that it will attain a sure footing only if during the period that he is on probation he shows that he is a fit person to be retained in service. I agree with the view expressed in *Mohammad Afzal Khan v. The Superintendent of Police, Montgomery* and *Riaz Ali Khan v. Pakistan*, that a person who is on probation is subject to all checks to which a permanent servant is subject. He cannot, for example, refuse to obey orders, keep his own hours of duty, or indulge in any malpractice. In my opinion, if the service of a probationer is terminated on the ground of unsatisfactory work that will not amount to dismissal or removal from service, such termination will be in terms of the contract or the rules made by the Government but if the service of a probationer is terminated on the ground of misconduct that will amount to removal or dismissal. It will be a stigma in his favour. In the last mentioned case, the probationer will be protected by the provisions of Article 177 of the Constitution of 1962 and will be entitled to a show-cause notice and a proper enquiry against him must be made.

Taking now the facts of each case, it will be noticed that the authorities concerned in the case of *Mohammad Siddiq Javaid Chaudhry* and *Mumtaz Hussain Malik* appellants, terminated their services on the ground of unsatisfactory work and conduct. The record shows that there were allegations against them of corruption. In these circumstances, the order terminating their services amounts to removal and dismissal within the meaning of Article 177 and they were entitled to a show-cause notice under Article 177 of the Constitution of Pakistan, 1962.

Similarly, in the case of *Abdur Rashid Abbasi*, appellant, the allegations of corruption were made against him and an enquiry was also held but instead of completing the enquiry, his services were terminated on the ground that he is not likely to become a good officer. It was also mentioned in the order that there were complaints of corruption against

Abdur Rashid Abbasi
ADVOCATE
SUPREME COURT

him. In these circumstances, the order terminating his services amounts to removal and dismissal and he was entitled to the protection of Article 177 of the Constitution of 1962.

On these findings, I will accept all the appeals and will hold that the services of all the appellants were terminated in violation of Article 177 of the Constitution of 1962 and they are still in service. It is, however, open to the respondents to hold proper enquiry against them after show-cause notice is issued.

In the result, the appeals are accepted with no order as to costs.

HAMOODUR RAHMAN, C. J.-I agree.

SALAHUDDIN AHMED, J.-I agree.

S. A. H.

Appeals accepted.

Attested
(Signature)
Secretary
SECRETARY
SURRENDER

2001 SCMR 1566

[Supreme Court of Pakistan]

Present: Iftikhar Muhammad Chaudhry,
Qazi Muhammad Farooq and Hamid Ali Mirza, JJ

ZAHOOR AHMED---Petitioner

Versus

WAPDA and others---Respondents

Civil Appeals Nos. 1538, 1539 of 2000 and 252 of 2001, decided on 9th May, 2001.

(On appeal from the judgments dated 25-2-2000, passed by the Federal Service Tribunal, Islamabad in Appeals Nos.314(P), 348-P and 347-P of 1999).

(a) Constitution of Pakistan (1973)---

---Art.212(3)---Dismissal from service---Validity---Leave to appeal was granted by the Supreme Court to consider as to whether, - under the circumstances, without conducting regular enquiry, civil servants could be dismissed from service and whether fact finding enquiry could be a substitute of regular enquiry at all and be used against the civil servant, while imposing major penalty of dismissal from service.

(b) Pakistan Water and Power Development Authority Employees (Efficiency and Discipline) Rules, 1978---

---R.5---Misconduct---Dismissal from service---Opportunity to employee to defend---Necessity---Incumbent upon WAPDA to have conducted regular enquiry against employees after adopting procedure laid down in R.5 of Pakistan Water and Power Development Authority Employees (Efficiency and Discipline) Rules, 1978---When an employee had to be removed on the basis of misconduct allegedly committed by him he deserved fair opportunity to defend himself, for if on ground of misconduct he was dismissed from service then for all the times to come he would carry stigma of misconduct with him---Department, however, was always at liberty to initiate fresh disciplinary action against employees to establish as to whether they were guilty of misconduct.

Aleem Jaffar v. WAPDA 1998 SCMR 1445 fol.

Sheikh Riazul Haque, Advocate Supreme Court and M.A. Zaidi, Advocate-on-Record for Appellants (in all Cases).

Muhammad Latif, Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Respondents.

Alex (R-3)
27
Attest
On 9
ADVOCATE
SULISBERG CENTRE

Date of hearing; 9th May, 2001.

28

JUDGMENT

IFTIKHAR MUHAMMAD CHAUDHRY, J.---By this judgment we intend to dispose of Civil Appeals Nos. 1538, 1539 of 2000 and No.252 of 2001 as question of-law involved in these matters is common.

2. For sake of convenience relevant para. from the leave granting order dated 20th October, 2001 is reproduced hereinbelow:--

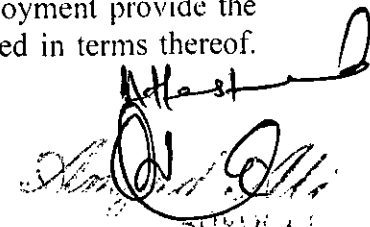
"4. Leave to appeal is granted in these matters to consider that:

(i) Whether under the circumstances, without conducting regular enquiry, the petitioners could be dismissed from service and p' whether fact finding enquiry could be a substitute of regular enquiry at all and be used against the petitioners, while imposing major penalty of dismissal from service."

3. Learned counsel for the appellants contended that WAPDA has alleged serious allegations pertaining to misconduct against the appellants, therefore, in view of the judgment of this Court reported as Aleem Jaffar v. WAPDA 1998 SCMR 1445 instead of adopting summary procedure of enquiry department should have followed the procedure of regular enquiry under Rule 5 of Pakistan WAPDA Employees (Efficiency and Discipline) Rules. 1978. However, learned counsel appearing for WAPDA stated that charges of misconduct alleged against the appellants were fully proved through an administrative enquiry and on basis of the same letter of explanation was issued to all of them and thereafter competent authority decided not to follow the procedure of regular enquiry as such show-cause notices were issued to all of them and after receiving their replies they were removed from service. We have gone through the available record particularly documents referred to by the learned counsel for WAPDA and have also considered the ratio decidendi of the judgment in the case of Aleem Jaffar (ibid). The relevant para. therefrom is reproduced hereinbelow:-

"However, it may further be observed that this Court has also held that even in the case of temporary employee whose service is liable to be terminated on thirty days notice or pay in lieu thereof on either side, his services cannot be terminated on the basis of misconduct without holding proper inquiry. In this regard reference may be made to the case of the Secretary, Government of the Punjab through Secretary, Health Department, Lahore pd others v. Riazul Haq 1997 SCMR 1552; Muhammad Amjad v. The Chief Engineer, WAPDA and another 1998 PSC 337. In the above first case the following observations were made on the controversy in issue:--

Without going into the controversy, as to whether the respondent's claim that he was a permanent employee, we may observe that there is a marked distinction between simpliciter termination of services in accordance with the terms of appointment and the termination of the services on the ground of misconduct. There is no doubt that if a person is employed on contract basis and if the terms of employment provide the manner of termination of his services, the same can be terminated in terms thereof.

Attest

SUPREME COURT

However, if a person is to be condemned for misconduct, in that event, even if he is a temporary employee or a person employed on contract basis or a probationer, he is entitled to a fair opportunity to clear his position, which means that there should be a regular inquiry in terms of the Efficiency and Discipline Rules before condemning him for the alleged misconduct. In this regard, reliance has been placed by the learned counsel for the respondent on the case of Muhammad Sadiq Javed Chaudhry v. The Government of West Pakistan PLD 1974 SC 393, in which Waheeduddin Ahmed, J. has succinctly brought out a distinction between termination of services of a probationer on the ground of unsatisfactory performance and the ground of misconduct...

"The above view was reiterated in the latter case recently."

"We are, therefore, of the view that since the impugned removal order is not simpliciter a removal order in terms of section 17(1-A) of the Act but it is founded on the above show-cause notice and the appellant's reply to the same, it is tainted with stigma. We, therefore, allow this appeal, set aside the judgment under appeal and the order of removal. The appellant shall stand reinstated with back benefits. There will be no order as to costs."

4. In view of the law laid down by this Court in the above judgment we are not inclined to comment on the merits of the case as we are of the opinion that in terms of allegations pertaining to misconduct of appellants it was, incumbent upon WAPDA to have conducted regular enquiry against appellant after adopting procedure laid down in Rule 5 of Pakistan WAPDA Employees (Efficiency and Discipline) Rules, 1978 because we have already held in the judgment cited hereinabove that when an employee has to be removed on the basis of misconduct allegedly committed by him he deserved fair opportunity to defend himself because if for such reasons he is dismissed from service then for all the times to come he carries a stigma of misconduct with him. However, the department is always at liberty to initiate fresh disciplinary action against appellants to establish as to whether they are guilty for misconduct. Thus for the foregoing reasons appeals are allowed and impugned orders are set aside. The cases are remanded to WAPDA respondent for proceeding afresh against them keeping in view the observations made hereinabove. It is hoped that the departmental proceedings, if initiated, shall be disposed of against them expeditiously instead of keeping them pending unnecessarily for a long period.

5. Parties are left to bear their own costs.

M.B.A./Z-19/S

Order accordingly.

Altaf Ali
Altaf Ali
ADVOCATE
SUPREME COURT

2014 S C M R 1263

[Supreme Court of Pakistan]

Present: Sarmad Jalal Osmany, Gulzar Ahmed and Mushir Alam, JJ

Engineer MAJEED AHMED MEMON---Appellant

Versus

LIAQUAT UNIVERSITY OF MEDICAL AND HEALTH SCIENCES
JAMSHORO and others---Respondents

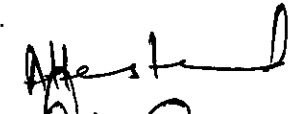

Civil Appeal No.17-K of 2009, decided on 28th April, 2014.

(On appeal against the order dated 13-11-2008 passed by the Division Bench of High Court of Sindh at Karachi in C.P. No.D-1202 of 2008)

Removal from Service (Special Powers) Ordinance (XVII of 2000) [since repealed]---

---S. 8---Employment on probation---Allegation of corruption and malpractice---Issuance of show cause notice---Termination from service without a full inquiry and opportunity to accused employee to defend himself---Legality---Opportunity of personal hearing---Scope---Accused-civil servant was employed on probation at a university---Accused employee during his service was alleged to have made certain purchases for the University without proper tendering---Enquiry committee conducted its preliminary enquiry in which accused was neither associated or heard, and the allegations against him were prima facie found to be correct pursuant to which a show cause notice was issued to him---Accused submitted his reply to the show cause notice, denying the allegation---University authorities found reply submitted by accused as unsatisfactory and terminated his services with immediate effect and repatriated him to his parent department---Even though accused was a probationer, his services could not have been terminated without holding a full-fledged enquiry in which accused would have an opportunity to defend himself on the allegations made against him in the show-cause notice---Appeal was allowed and accused was reinstated in the service of the University with the direction that a regular fact finding enquiry shall be conducted by the University against accused within 30 days on the basis of the show cause notice, and if in such enquiry accused was exonerated then he shall be given back benefits etc. subject to adjustment from pay and salary which he had withdrawn elsewhere from the date of dismissal till date of reinstatement.

Muhammad Amjad v. The Chief Engineer, WAPDA and another 1998 PSC 337; Muhammad Siddique Javaid Chaudhry v. The Government of West Pakistan PLD 1974 SC 393 and Zahoor Ahmed v. WAPDA 2001 SCMR 1566 rel.



ADVOCATE
SUPREME COURT

Ansari Abdul Latif, Advocate Supreme Court and Ghulam Qadir Jatoi,
Advocate-on-Record for Appellant.

Ex part for Respondents Nos. 1 and 2.

Kamaluddin, Advocate Supreme Court for Respondents Nos.3 and 4.

Date of hearing: 28th April, 2014.

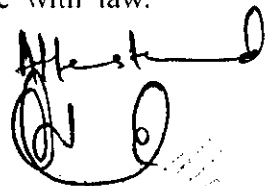
ORDER

GULZAR AHMED, J.---The appellant was employed by respondent No. 1 on probation on 1-7-2006 as Project Director BPS-20. The probation period was extended for further one year vide office order dated 22-9-2007. A complaint was received by respondent No. 1 against the appellant in respect of purchase of furniture, office, equipments and crockery items from Messrs Naqibia Enterprises in the sum of Rs. 40 million. The Vice-Chancellor of respondent No. 1 constituted a Committee to make a preliminary investigation. The Committee after deliberation submitted its report dated 20-8-2007 with conclusion that the said purchases were made by the appellant without proper tendering and Messrs Naqibia Enterprises was given special favour. A show cause notice dated 27-8-2007 was issued to appellant which was replied by him denying the allegations. The reply of the appellant was put up to the Syndicate of respondent No. 1 in its 13th meeting held on 20-10-2007 wherein the Resolution No. Syn-13.15 was passed in the following terms:--

"Resolution No. Syn-13.15

Resolved that in view of report received from the Inquiry Committee constituted by the University under its letter No.LUMHS/ESTT/17264/69, dated 16-6-2007 the reply received from Eng. Majeed A. Memon Project Director (Engineering Wing) in response to this University Show Cause Notice 27-8-2007 was examined and found unsatisfactory. As a consequent thereto the services of Eng. Majeed A. Memon are no more required by this University, therefore, his services be terminated from this University with immediate effect and he be repatriated to his parent department."

Accordingly, through office order dated 7-11-2007 the service of the appellant was terminated with immediate effect and he was repatriated to his parent department. Against this office order, the appellant filed Constitution Petition No. D-1202 of 2008 in the High Court of Sindh at Karachi. Through impugned order dated 13-11-2008 the petition was dismissed with the observation that the termination of the services of the appellant by respondent No. 1 vide office order dated 7-11-2007 shall be treated as such without any further allegation of illegalities committed by him as observed by the Enquiry Committee regarding purchase of furniture, office equipments and crockery items from Messrs Naqibia Enterprises and it was held that termination of service of the appellant by respondent No. 1 during his probationary period which in terms of observation of the court was in accordance with law. Aggrieved by the impugned order, the appellant had filed this appeal.



2. Vide order dated 17-2-2009 leave to appeal was granted which order is reproduced as follows:--

"This petition is directed against the order dated 13-11-2008 passed by honourable High Court of Sindh in C.P.No. D-1202 of 2008.

(2) The petitioner though working as a probationer in the respondents' university was served with a show cause notice containing allegations of misconduct under the Removal From Service (Special Powers) Ordinance, 2000. He submitted a reply to the notice but admittedly neither an inquiry was held nor was a personal hearing accorded to him. On 7-11-2007 an order terminating the petitioner's services on the basis of charges levelled was passed.

(3) Mr. Ansari Abdul Latif, learned counsel for the petitioner has contended that even while being a probationer since there were definite allegations of corruption or irregularity he could not be removed without a proper inquiry. Reliance is placed on the pronouncement of this Court in the case of Muhammad Siddiq Javaid Chaudhry v. The Government of West Pakistan reported in (PLD 1974 SC 393) which prima facie supports his point of view. Leave to appeal is, therefore, granted. Appeal may be ready within three weeks and be listed for hearing whenever a Bench of three honourable Judges is available thereafter."

3. Mr. Ansari Abdul Latif, learned Advocate Supreme Court for appellant has contended that though the appellant was on probation but once show cause notice issued to him containing allegations of corruption and malpractice which was denied by the appellant in his reply, the respondent No. 1's Syndicate could not have terminated the service of the appellant without holding a full-fledged enquiry and that the observation made by High Court in the impugned order itself will not remove the stigma which has been attached to his service record. In support of his submissions learned counsel has relied upon the cases of MUHAMMAD AMJAD v. THE CHIEF ENGINEER, WAPDA AND ANOTHER (1998 PSC 337), MRS. ABIDA PARVEEN CHANNAR v. HIGH COURT OF SINDH AT KARACHI (2009 SCMR 605) and Dr. M. SOHAIL KARIM HASHMI v. FEDERATION OF PAKISTAN THROUGH SECRETARY, MINISTRY OF HEALTH, GOVERNMENT OF PAKISTAN, ISLAMABAD (2009 SCMR 1472).

4. On the other hand, Mr. Kamaluddin, learned Advocate Supreme Court for respondent has empathetically argued that service of probationer could be dispensed with during the probationary period and that no cause of grievance has arisen to the appellant either by not holding of enquiry nor by terminating his service. In support of his submission learned counsel has relied upon the cases of MUHAMMAD IQBAL KHAN NIAZI v. LAHORE HIGH COURT, LAHORE (2003 PLC (C.S.) 285), REHAN SAEED KHAN v. FEDERATION OF PAKISTAN (2001 PLC (C.S.) 1275), REHAN SAEED KHAN v. FEDERATION OF PAKISTAN (1990 SCMR 1510), MUHAMMAD SIDDIQUE JAVAID CHAUDHRY v. THE GOVERNMENT OF WEST PAKISTAN (PLD 1974 SC 393), CHAIRMAN, SYNDICATE UNIVERSITY OF PESHAWAR AND ANOTHER v. DIL NAWAZ

131
32
Attest
[Signature]
[Stamp]
[Text]

KHAN (2007 SCMR 703), ZAHOOR AHMED v. WAPDA (2001 SCMR 1566) and MESSRS PAKISTAN STATE OIL CO. LTD. v. MUHAMMAD TAHIR KHAN AND OTHERS (PLD 2001 SC 980).

33

5. We have considered the submissions of learned counsel for the parties and have gone through the record.

6. There is no denial that the Enquiry Committee was constituted on the basis of a complaint received by the respondent No. 1 regarding corruption and malpractice by the appellant in making purchases for respondent No. 1 from Messrs Naqibia Enterprises. On the basis of preliminary enquiry in which admittedly the appellant was not associated nor heard, the allegations against the appellant were prima facie found to be correct pursuant to which the appellant was issued show cause notice dated 27-8-2007 in which his explanation was sought with regard to the said purchases made for the respondent No. 1. The appellant submitted his reply dated 8-9-2007, in which he has denied the allegations made in the show cause notice. In the office order dated 7-11-2007 the University Syndicate has proceeded to pass the Resolution No. Syn-13.15 which has already been reproduced above, which clearly shows that the service of the appellant has been terminated as sequel to the show cause notice and its reply being found unsatisfactory. There being a definite allegation of corruption and malpractice against the appellant in the show cause notice and his services being terminated on that account, in our view even though the petitioner being a probationer, his service could not have been terminated without holding a full fledged enquiry in which the appellant would have opportunity to defend himself on the allegations made against him in the show-cause notice. Such is the state of law and reference in this regard is made to the cases of Muhammad Amjad (supra), Zahoor Ahmed (supra) and Muhammad Siddiq Javaid Chaudhry (supra).

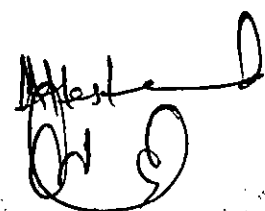
7. After hearing the learned counsel for the parties, following short order was passed today:--

"For the reasons to be recorded later, this appeal is allowed. The appellant shall be reinstated in the service of respondent University immediately. A regular fact finding enquiry shall be conducted by the respondent within thirty days against the appellant on the basis of show cause notice etc earlier issued to him. If in such enquiry the appellant is exonerated then he shall be given back benefits etc. subject to adjustment from pay and salary which he has withdrawn elsewhere from the date of dismissal till the date of reinstatement."

8. Above are the reasons for the short order.

MWA/M-22/SC

Appeal allowed.



2014 P L C (C.S.) 1194

Aux R-5

34

[Punjab Subordinate Judiciary Service Tribunal]

Before Muhammad Farrukh Irfan Khan, Chairman, Abdus Sattar Asghar and Muhammad Ameer Bhatti, Members

MUHAMMAD ASAD ULLAH SIDDIQUI

Versus

REGISTAR, LAHORE HIGH COURT, LAHORE and others

Service Appeal No.16 of 2003, decided on 16th May, 2014.

Punjab Civil Servants Act (VIII of 1974)---

---S. 10---Constitution of Pakistan, Art.10-A---Punjab Subordinate Judiciary Service Tribunal Act (XII of 1991), S.5---Termination of service---Serious allegation of misconduct---Authority dispensed with the regular inquiry---Right of due process and fair trial---Services of the appellant were terminated without conducting inquiry during his probation period on the ground that he perpetrated gross misconduct by lodging a false and concocted complaint to malign his colleague---Authority ordered initiation of disciplinary proceedings against the appellant---Inquiry Officer instead of conducting the regular inquiry proposed to terminate the services of the appellant under S.10 of the Punjab Civil Servants Act, 1974---Authority dispensed with the procedure of regular inquiry and passed the order of termination of appellant during his probation period---Validity---Order was not an order of termination simpliciter rather it was based upon allegation of misconduct---Order of termination in fact was an order of imposition of penalty of removal from service necessitating a regular inquiry and fair opportunity of hearing to be given by the Authority to the appellant---Serious allegation of misconduct was pending inquiry against the appellant therefore appellant's termination even during period of probation could not be ordered without finding truth of the allegation by providing an opportunity of hearing to the appellant through due process of law---Right of due process and fair trial is Fundamental Right of each and every citizen of this country duly safeguarded and guaranteed under Art.10-A of the Constitution, which could not be denied in any case---No civil servant could claim salary and other benefits without performing the duty, therefore, Authority would determine as to whether or not appellant was engaged in gainful employment during the intervening period---Punjab Subordinate Judicial Service Tribunal, accepted the appeal in the circumstances.

Mrs. Abida Parveen Channar v. High Court of Sindh at Karachi 2009 SCMR 605 and Pakistan State Oil Co. Ltd. v. Muhammad Tahir Khan and others PLD 2001 SC 980 rel.

Appellant in person.

Attested

REGISTRAR, LAHORE HIGH COURT, LAHORE

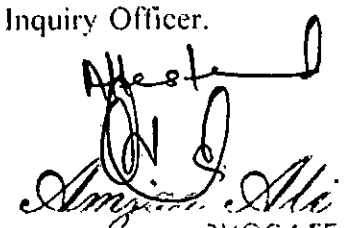
Nayyar Iqbal Ghouri and Daud Ahmed, Assistant Registrar (Confidential),
Lahore High Court. Lahore for Respondents.

Date of hearing: 16th May, 2014.

JUDGMENT

JUSTICE ABDUS SATTAR ASGHAR (MEMBER).--- This appeal under section 5 of the Punjab Subordinate Judiciary Service Tribunal Act, 1991 is directed against the impugned order/ notification dated 10-11-2003 passed by the respondent whcreby services of the appellant were dispensed with terminating the extended period of probation under section 10 of the Punjab Civil Servant Act, 1974.

2. Shorn of unnecessary details brief facts essential for adjudication of this appeal are that appellant was appointed as Civil Judge-cum-Judicial Magistrate vide notification 13-11-2000 and posted as such at Pattoki District Kasur. Vide same notification 114 other Civil Judges were also appointed in the Province. The appellant assumed the charge of the post on 30-11-2000. During his posting at Pattoki on 11-12-2002 he was Incharge of Police Station Sarai Mughal. Appellant was on leave on 10-12-2002. The appellant informed the learned District and Sessions Judge Kasur in writing that on 11-12-2002 the Reader of Mr. Faiz Ahmad Ranjha Civil Judge-cum-Judicial Magistrate namely Muhammad Yousaf telephonically summoned the police file of a criminal case titled 'State v. Amjad Ali' F.I.R. No.260 of 2002 dated 4-10-2002 under section 11, Offence of Zina (Enforcement of Haddood) Ordinance, VII of 1979 registered with the Police Station Sarai Mughal from the said police station at about 4.00 PM on 11-12-2002 and Mr. Faiz Ahmad Ranjha Judicial Magistrate passed the order with regard to the refusal of the discharge report submitted by the police however order was shown to have been made on 10-12-2002 on which date the appellant was on casual leave; that on 12-12-2002 this fact about passing an ante dated order by Mr. Faiz Ahmad Ranjha Judicial Magistrate came to the appellant's knowledge; that on 13-12-2002 appellant called the concerned officials and recorded their statements and reported the same to the learned District and Sessions Judge Kasur with regard to the misconduct of the Duty Magistrate namely Mr. Faiz Ahmed Ranjha along with statements of Moharrar, A.S.-I. and S.H.O. Police Station Sarai-Mughal who deposed that Moharrar delivered the file to the Court of Mr. Faiz Ahmed Ranjha Civil Judge on 11-12-2002 at 4.00 PM after court hours when allegedly the said order was passed. The learned District and Sessions Judge got inquired into the complaint through the Additional District and Sessions Judge Kasur who submitted the report that complaint of the appellant was false and concocted to malign his colleague. Consequently learned District and Sessions Judge prima facie formulating the opinion that appellant was himself guilty of gross misconduct proposed regular inquiry into the matter and submitted the report to the respondent vide letter dated 15-1-2003 for necessary orders. The matter was placed before the learned Authority. The learned Authority ordered initiation of disciplinary proceedings under the Punjab Civil Servants (Efficiency and Discipline) Rules, 1999 against the appellant appointing Mr. Abdus Salam Khawar, Member Inspector Team as Inquiry Officer.


ADVOCATE
SUPREME COURT

The Inquiry Officer after perusing the record instead of conducting the regular inquiry proposed that as the appellant was on probation therefore his services may be terminated under section 10 of the Punjab Civil Servants Act, 1974. The learned Authority consequently passed the impugned order dispensing with the services of appellant terminating his probation period. Being aggrieved appellant filed representation to the respondent on 24-12-2003. Simultaneously appellant also filed this appeal.

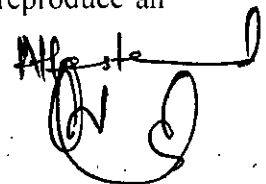
3. Learned counsel for the appellant argues that in the background of allegation of misconduct against the appellant necessitating a regular inquiry as ordered by the learned Authority the impugned order of termination without conducting a regular inquiry as well as without notice and providing opportunity of hearing to the appellant is illegal, against principle of due process, untenable and liable to set aside.

4. Conversely learned counsel for the respondent contended that under section 10 of the Punjab Civil Servants Act, 1974 the learned Authority was competent to dispense with the service during the period of probation and therefore no illegality or prejudice was caused to the appellant. Further submits that Clause (4) of the appellant's appointment letter dated 13-11-2000 clearly manifests that his employment was purely temporary and his services could be terminated at any time without assigning any reason. He also contends that impugned order is an order of termination simpliciter bearing no stigma; that statutory provision of termination of services during probation was duly activated and discretion vested with the Authority was exercised legitimately; that the impugned termination order does not suffer from any legal infirmity or jurisdictional error therefore appellant has no case to call for interference by this Tribunal.

5. We have given patient hearing to learned counsel for the parties and examined the record.

6. It is on the record that District and Sessions Judge Kasur had proposed regular inquiry into alleged misconduct of the appellant and on that basis the learned Authority had ordered regular inquiry against the appellant in terms of Punjab Civil Servants (Efficiency and Discipline) Rules, 1999 by appointing Mr. Abdus Salam Khawar MIT/Inquiry Officer who instead of conducting the inquiry in accordance with law indicated that the officer was in probation period and proposed appellant's termination under section 10 of the Punjab Civil Servants Act, 1974 whereupon the impugned order of termination was passed by the learned Authority. It is therefore obvious that the impugned order is not an order of termination simpliciter rather it was based upon allegation of misconduct. Appellant therefore appears to be prejudiced of the termination order as no right of hearing was extended to him. The impugned order of termination in fact was an order of imposition of penalty of removal from service necessitating a regular inquiry and fair opportunity of hearing to be given by the Authority to the appellant.

7. At this juncture reliance is made upon Mrs. Abida Parveen Channar v. High Court of Sindh at Karachi (2009 SCMR 605). It will be expedient to reproduce an extract of the above said dictum which reads below:---




"Nevertheless when it was discerned from the record produced before the Court that allegations of corruption or misconduct existed, their Lordships held them entitled to notice and set aside the orders of termination. The law declared by this Court, therefore, appears to be that a right to notice is not to be premised merely upon the question whether the order of termination indicated a stigma but whether allegations of misconduct had any bearing upon the mind of the competent authority passing the order."

8. The Hon'ble Supreme Court of Pakistan in another case titled Pakistan State Oil Co. Ltd. v. Muhammad Tahir Khan and others (PLD 2001 Supreme Court 980) has candidly laid down that a Service Tribunal is required to hold an inquiry into the question whether it was termination simplicitor or termination in the garb of dismissal. In this case since the serious allegation of misconduct was pending inquiry against the appellant therefore in view of the above quoted dictums laid down by the Hon'ble apex Court appellant's termination even during period of probation could not be ordered without finding truth of the allegation by providing an opportunity of hearing to the appellant through due process of law. Needless to say that right of due process and fair trial is fundamental right of each and every citizen of this country duly safeguarded and guaranteed under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 which cannot be denied in any case.

9. For the above reasons we allow this appeal and set aside the order dated 10-11-2003 regarding dispensing with the services of appellant. The appellant is ordered to be reinstated in service. The entitlement of the appellant to claim back-benefits, however, shall be decided by the learned Authority because no civil servant can claim salary and other benefits without performing the duty therefore learned Authority will determine as to whether appellant is engaged in gainful employment during the intervening period. Needless to say that the learned Authority may probe into allegation of misconduct against the appellant if deemed appropriate. The appellant would continue to be treated as probationer on assumption of duties and acceptance of his appeal in no way would relieve him of conditions for confirmation in accordance with relevant law and rules.

SA/2/PST
accordingly.

Order

Attest

Saqib Ali
ADVOCATE
SUPREME COURT

2015 CLC 1509

[Lahore]

Before Syed Mansoor Ali Shah, J

NADEEM ASGHAR NADEEM and others----Petitioners

versus

PROVINCE OF THE PUNJAB and others----Respondents

W.P.No.26696 of 2014, heard on 6th May, 2015.

(a) Constitution of Pakistan---

----Art. 10A---Right to fair trial---Civil rights---Obligations---Nature and ambit of right to fair trial under Art.10A of the Constitution--- "Determination of civil rights and obligations of a person through fair trial and due process" was a fundamental right---Civil rights were the rights guaranteed by the Constitution and the legislation---"Obligations" may refer to anything that a person was bound to do or forbear from doing, whether such duty was imposed by law, contract, promise, social relations, courtesy, kindness or morality and anything that an individual was required to do because of a promise, vow, oath, contract, or law; and it referred to a legal or moral duty that an individual could be forced to perform or penalized for neglecting to perform---Right of one person was an obligation of the other, and vice versa and such mutually corresponding and symbolic relationship between civil rights and obligations, expanded the proportions and broadened the amplitude of Art.10A of the Constitution and placed it as one of the most robust, dynamic and an evergreen Fundamental Right that was not frozen in time or moored to serve only the age old vested rights--- Article 10A of the Constitution was a Constitutional right, hence it was open and all embracing and was there to include all kinds of rights and obligations that emerged from the Constitution, legislation, law, contract, promise, social relations, courtesy, kindness or morality---Article 10A of the Constitution could not be put in shackles and in fact went beyond vested rights---Article 10A of the Constitution therefore, dealt with rights and duties, which if violated could result in loss of some personal benefit or advantage or curtail a privilege or liberty or franchise.

Warid Telecom (Pvt.) Ltd. and 4 others v. Pakistan Telecommunication Authority through Chairman 2015 SCMR 338; Suo

Aux (2-6)
38

Handwritten signature and initials

Handwritten text at the bottom right

Motu action regarding allegation of business deal between Malik Riaz Hussain and Dr. Arsalan Ifikhar attempting to influence the judicial process PLD 2012 SC 664; Babar Hussain Shah and another v. Mujeed Ahmed Khan and another 2012 SCMR 1235; Suo Motu Case No.4 of 2010 PLD 2012 SC 553; Liaqat Ali Chughtai v. Federation of Pakistan through Secretary Railways and 6 others PLD 2013 Lah. 413; Shabbir Ahmed v. Kiran Khursheed and 8 others 2012 CLC 1236; The most common legal application of the term civil rights involves the rights guaranteed to U.S. citizens and residents by legislation and by the Constitution, Free Dictionary. <URL:www.thefreedictionary.com>; Black's Law Dictionary, 9th Ed. p.1179 and Mian Fazal Din v. Lahore Improvement Trust, Lahore, etc. PLD 1969 SC 223 rel.

(b) Fundamental Rights---

----"Civil rights", meaning of---Civil rights were rights guaranteed by the Constitution and Legislation.

The most common legal application of the term civil rights involves the rights guaranteed to U.S. citizens and residents by legislation and by the Constitution, Free Dictionary. <URL:www.thefreedictionary.com>. rel.

(c) Words and Phrases---

----"Obligations", meaning of---Obligations may refer to anything that a person was bound to do or forbear from doing, whether the duty was imposed by law, contract, promise, social relations, courtesy, kindness or morality and anything that an individual was required to do because of a promise, vow, oath, contract, or law; and it referred to a legal or moral duty that an individual could be forced to perform or penalized for neglecting to perform.

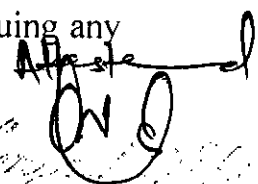
Black'sLaw Dictionary. 9th Ed. p.1179 rel.

(d) Punjab Civil Servants Act (VIII of 1974)---

----Ss. 10(1)(i), 5, 4 & 6---Punjab Judicial Service Rules, 1974 R.7A--- Constitution of Pakistan, Arts.10A, 4, 9, 14 & 25---Constitutional petition--- Civil service---Judicial Officers---Probation---Termination of service during the initial or extended period of probation---Constitutionality of termination of service without notice under S.10(1)(i) of the Punjab Civil Servants Act, 1974---Petitioners were appointed as Civil Judges-cum-Judicial Magistrates, subject to probation and their services were terminated thereafter, under

[Handwritten signature]
S. 10(1)(i)
Punjab Civil Servants Act, 1974

S.10(1)(i) of the Punjab Civil Servants Act, 1974 without notice and without disclosing of reasons---Petitioners challenged the vires of S.10(1)(i) of the Punjab Civil Servants Act, 1974 on the ground that same was unconstitutional in view of Art.10A of the Constitution---Held, that, in the present case, Ss.4, 5 & 6 of the Punjab Civil Servants Act, 1974, conferred a right to confirmation, once the judicial officer successfully completed his period of probation and also conferred an obligation on the authority to confirm the appointment of the officer if the probationer successfully completed the period of probation---Probationer was also under an obligation to meet the requirements of R.7A of Punjab Judicial Service Rules, 1974 and had a corresponding right to confirmation subject to his fulfilling such obligations---Probationer, in effect, already stood appointed but had to undergo the process of confirmation and therefore, the right of confirmation of a probationer or the obligation of the authority to confirm the probationer, if he successfully completed the period of probation, or vice versa, were covered under Art.10A of the Constitution and such rights and obligations had to be determined through a fair trial and due process---One of the requirements for confirmation after period of probation were given under R.7A(a) of the Punjab Judicial Service Rules, 1974, wherein "performance evaluation" was subjective and relied on sources other than the result of the Departmental Examination and the Course and Training scorecard and if the information or evidence collected was adverse to the interest of the judicial officer, natural justice and the strength of the settled jurisprudence required that the judicial officer be put on notice and be heard after an adequate disclosure of the adverse material and information was made available to such judicial officer---Said well-established principle stood Constitutionalized as a fundamental right under Art.10A of the Constitution, and fair trial and due process required that adequate disclosure was made and the probationer was put on notice and even otherwise, right to life which included right to livelihood and right to dignity of a person under Art.14 of the Constitution also stood behind Art.10A and that S.10(1)(i) of the Punjab Civil Servants Act, 1974, therefore, offended Art.10A of the Constitution in such respect---Termination simpliciter was termination from service when a probationer failed to meet the eligibility requirements of the post set by the employer like a departmental examination or in service training or if the appointment was ad hoc and dependent on certain conditions or if the post itself was abolished and such like termination was not punitive or penalizing in nature and it did not cast any allegation or affect the professional reputation of the officer or the future prospects of employment of the probationer; which under the law was referred to as a "discharge" from service---Probationer, in such a case, therefore need not be put on notice if the termination was actually a discharge from service or was termination simpliciter as no useful purpose could be served by issuing any

Attested

 Secretary

such notice as the authority had already granted the probationer an opportunity of appearing before the authority in the departmental examination and also in the course and training conducted by the authority--High Court observed that in such a case of termination simpliciter, the competent authority was under no obligation to issue notice before termination of service and S.10(1)(i) of the Punjab Civil Servants Act, 1974 was applicable in such a case; however probationer under Art.10A of the Constitution was, free to challenge the legality of the termination order or the merits of the departmental examination or the transparency of the departmental training in a court of competent jurisdiction, if he so desired, on grounds other than the ground of failure to issue notice---Where termination carried allegations of misconduct, inefficiency and corruption, the civil servant was entitled to a notice to defend himself and also to an adequate disclosure of the evidence against him and if such adverse information and material had weighed on the mind of the authority and had been the dominant reason behind the order of termination, withholding of any such allegation or avoiding to disclose any reason for termination, in order to bypass the requirement of notice by opting for termination simpliciter was offensive to Art.10A of the Constitution and the option of termination simpliciter was available with the authority only when the termination according to the service record of the civil servant, was not based on any allegations of misconduct, inefficiency or corruption against a civil servant---While S.10(1)(i) of the Punjab Civil Servants Act, 1974 was unconstitutional in some situations, it was constitutionally permissible in others, and hence in such a situation, the Constitutionality of the said section could be saved if the same was read down, instead of being struck down---High Court, therefore, held that in the light of Art.10A of the Constitution read with Arts.4, 9, 14 & 25 of the Constitution, S.10(1)(i) of the Punjab Civil Servants Act, 1974 was read down, to the extent, that firstly in cases where termination of a probationer was on the grounds of misconduct, inefficiency, corruption, etc. prior notice was mandatory and was required to be issued to the probationer; and that secondly where the probationer had failed to meet the eligibility requirements of a departmental examination or in service training course, the probationer could be terminated without notice, but any such termination order must carry reasons for termination; and thirdly that; in case the probationer had passed the eligibility criteria and had been found liable for misconduct, inefficiency or corruption, the competent authority did not have a choice to opt for termination simpliciter by withholding the real reason for termination and must issue a reasoned termination order---Constitutional petitions were allowed, accordingly.

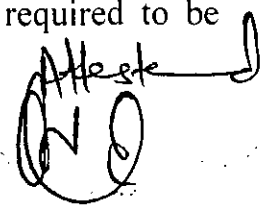
Amjad Ali
 ADVOCATE
 SUPREME COURT

Asif Saeed v. Registrar, Lahore High Court and others PLD 1999 Lah. 350; Muhammad Iqbal and others v. Lahore High Court through Registrar and others 2010 SCMR 632; Wattan Party through President v. Federation of Pakistan through Cabinet Committee of Privatization, Islamabad and others PLD 2006 SC 697; Pakistan Peoples Party v. Government of Punjab and others PLD 2014 Lah. 330; Muhammad Ashraf Tiwana and others v. Pakistan and others 2013 SCMR 1159; National Bank of Pakistan and 117 others v. SAF Textile Mills Ltd and another PLD 2014 SC 283; Messrs Chenone Stores Ltd through Executive Director (Finance Accounts) v. Federal Board of Revenue through Chairman and 2 others 2012 PTD 1815; Bilal Akbar Bhatti v. Election Tribunal, Multan and 15 others PLD 2015 Lah. 272; Al-Jehad Trust through Raeesul Mujahideen Habib-ul-Wahabb-ul-Khairi and others v. Federation of Pakistan and others PLD 1996 SC 324; Imtiaz Ahmad Kaifi v. Government of Punjab and others PLD 2013 Lah. 598; Engineer Majeed Ahmed Memon v. Liaquat University of Medical and Health Sciences Jamshoro and others 2014 SCMR 1236; State of M.P. v. Rakesh Kohli and another 2013 SCMR 34; Arshad Mehmood v. Commissioner/Delimitation Authority, Gujranwala and others PLD 2014 Lah. 221; Babar Hussain Shah and another v. Mujeeb Ahmed Khan and another 2012 SCMR 1235; Federation of Pakistan v. Riaz Ali Khan PLD 1958 (W.P.) Lah. 22; Muhammad Siddiq Javaid Chaudhry v. The Government of West Pakistan PLD 1974 SC 393; Justice Khurshid Anwar Bhinder and others v. Federation of Pakistan and others v. Federation of Pakistan and another PLD 2010 SC 483; Abdul Haque Indhar and others v. Province of Sindh through Secretary Forest, Fisheries and Livestock Department, Karachi and 3 others 2000 SCMR 907; Ch. Muhammad Hussain Naqshbandi v. Government of the Punjab and others 2003 PLC (C.S.) 1421 and Liaqat Ali Shahid, Ex-Civil Judge, Bhalwal v. Government of the Punjab through Chief Secretary, Punjab, Lahore 1999 PLC (C.S.) 334 ref.

Mrs. Abida Parveen Channar v. High Court of Sindh 2011 PLC (C.S.) 836 rel.

(e) Civil service---

---Termination from service---Probationer---Requirement of notice prior to terminating the services of a probationer---Termination simpliciter---Scope--
 -Services of a probationer could be terminated without notice, in case of termination simpliciter but where there were allegations of misconduct or inefficiency levelled against the probationer, in such an eventuality, it was mandatory that the officer was put on notice and if there were allegations of inefficiency, misconduct or corruption, a probationer was required to be

Attest


served with a notice, with the rationale being that any termination in the nature of dismissal or removal carried a stigma, hence the civil servant should be granted an opportunity to defend and wash away any slur and taint alleged against such a civil servant.

Muhammad Siddiq Javaid Chaudhry v. The Government of West Pakistan PLD 1974 SC 393; Muhammad Amjad v. The Chief Engineer, WAPDA and another 1998 PSC 337; Ch. Muhammad Hussain Naqshbandi v. Government of the Punjab and others 2004 SCMR 44; Muhammad Iqbal Khan Niazi v. Lahore High Court, Lahore through Registrar 2003 PLC (C.S.) 285 and Rehan Saeed Khan and others v. Federation of Pakistan and others 2001 PLC (C.S.) 1275 rel.

(f) Constitution of Pakistan---

----Art. 14---Inviolability of dignity of man, etc.---Civil service---Termination from service---Reasons for termination---Every termination order must carry reasons and this was equally applicable to the case of termination simpliciter and there was no plausible explanation why a public authority must shy away from giving reasons for termination---To withhold reasons for termination of a civil servant generated a host of adverse assumptions against the character of a civil servant which had a bearing on his reputation and goodwill and failure of disclosing or intentional withholding of reasons was, therefore, below the dignity of any white collared officer and offended Art.14 of the Constitution.

(g) Civil Service---

----Termination simpliciter---Concept---Concept of termination simpliciter as opposed to a termination carrying a stigma---"Termination simpliciter" meant termination without any ceremony or termination in a summary manner and such a termination from service was when a probationer failed to meet the eligibility requirements of the post set by the employer like a departmental examination or in service training or if the appointment is ad hoc and dependent on certain conditions or if the post itself is abolished---Such like termination was not punitive or penalizing in nature and more importantly, it did not cast any allegation or affect the professional reputation of the officer or the future prospects of employment of the probationer and in such cases, probationer therefore need not be put on notice if the termination is actually a discharge from service or was termination simpliciter.

Handwritten signature
W Q

National Bank of Pakistan and 117 others v. SAF Textile Mills Ltd and another PLD 2014 SC 283 rel.

44

(h) Interpretation of Statutes---

----Purposive or contextual construction---Reading down of statute---
Concept and scope---Where literal construction or plain meaning caused hardship, futility, absurdity or uncertainty, the purposive or contextual construction was to be preferred to arrive at a more just, reasonable and sensible result---Every law was designed to further the ends of justice and not to frustrate it on mere technicalities and though the function of the courts was only to expound the law and not to legislate, nonetheless the Legislature could not be asked to sit to resolve the difficulties in the implementation of its intention and the spirit of the law and in such circumstances, it was the duty of the court to mould or creatively interpret the legislation by liberally interpreting the statute---Statutes must be interpreted to advance the cause of statute and not to defeat it and if certain provision of law construed in one way would make them consistent with the Constitution and another interpretation would render them unconstitutional; the court would lean in favour of the former construction---For upholding any provision, if it could be saved by reading it down, it should be done, unless plain words were so clear as to be in defiance of the Constitution---Such interpretations spring out because of the concern of courts to always let legislation to achieve its objective and not to let it fall merely because of a possible ingenious interpretation and words were not static but dynamic and this infused fertility in the field of interpretation---Principle of reading down, however, could not be available, where the plain and literal meaning from a bare reading of any impugned provision clearly showed it conferred arbitrary, uncanalised or unbridled power---Reading down the meanings of words with loose lexical amplitude was permissible as part of the judicial process and to sustain a law by interpretation was the rule---Courts could and must interpret words and read their meanings so that public good was promoted and power misuse was interdicted.

Elahi Cotton Mills Ltd. v. Federation of Pakistan PLD 1997 SC 582;
Indus Jute Mills Ltd. v. Federation of Pakistan 2009 PTD 1473;
Interpretation of Taxing Statutes by Mittal; Maharao Saheb Shri Bhim Singhji and others v. Union of India and others AIR 1981 SC 234;
Muhammad Umer Rathore v. Federation of Pakistan PLD 2009 Lah. 268;
Federal Steam Navigation Co. Ltd. and another v. Department of Trade and Industry (1974) 2 All E R 97; Delhi Transport Corporation v. D.T.C. Mazdoor Congress and others AIR 1991 SC 101; Sunil Batra v. Delhi

Attest
Sunil Batra
ADVOCATE
SUPREME COURT

Administration and others etc. AIR 1978 SC 1675 and Jagdish Pandey v. The Chancellor, University of Bihar and others AIR 1968 SC 353 rel.

45

Muhammad Aslam Rizvi, Mushtaq Ahmed Mohal for Petitioners.

Azhar Iqbal, Muzammal Akhtar Shabbir, Muqtedir Akhtar and Ch. Muhammad Shahid Iqbal for Petitioners (in connected writ petitions).

Shan Gul, Addl. A.-G. Punjab and Barrister Qasim Ali Chowhan, Asstt. A.-G. Punjab for Respondents.

Junaid Jabbar Khan Amicus Curiae.

Assisted by Qaisar Abbas and Mohsin Mumtaz, Research Associates and Civil Judges, Lahore High Court Research Centre (LHCRC).

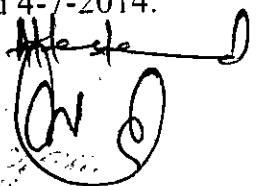
Date of hearing: 6th May, 2015.

JUDGMENT

SYED MANSOOR ALI SHAH, J.--- Petitioners have challenged the constitutionality of section 10(1)(i) of the Punjab Civil Servants Act, 1974 ("Act") as being ultra vires Article 10A of the Constitution of Islamic Republic of Pakistan, 1973 ("Constitution").

2. Brief facts leading to the above challenge are that petitioners were appointed as Civil Judges-cum-Judicial Magistrates vide Notification dated 23-6-2010 and posted as Civil Judges-cum-Judicial Magistrates against existing vacancies vide Notification dated 30-6-2010. The appointment of the petitioners was subject to confirmation in terms of Rule 7A of the Punjab Judicial Service Rules, 1994 ("Judicial Rules") which required that the candidates complete initial or extended period of probation satisfactorily on the basis of (a) Performance Evaluation made by the Departmental Confirmation Committee; (b) attend and successfully qualify such Course and Training as may be determined by the High Court and (c) pass Departmental Examination under the Punjab Civil Judges Departmental Examination Rules, 1991.

3. It is submitted that the petitioners successfully completed the Course and Training and passed the Departmental Examination, however, just a day before the expiry of the probationary period of four years, the services of the petitioners were terminated, without notice and without furnishing any reason, under section 10(1)(i) of the Act, vide Notification dated 4-7-2014.


A handwritten signature is written over a circular stamp. The stamp contains the initials 'CW' and a date '4-7-2014'. Below the stamp, there is some faint, illegible text.

4. Petitioners, through the instant petition, have laid challenge to the constitutionality of section 10(1)(i) of the Act, which deprives the petitioners of an opportunity of prior notice and reason for the termination of their services. It has been argued that the impugned section is ultra vires the Constitution as it deprives the petitioners their right to due process and fair trial under Articles 4 and 10A of the Constitution besides being discriminatory and as such violative of Article 25. They submit that if section 10(1)(i) of the Act is declared unconstitutional they will have an opportunity to approach the Lahore High Court on the administrative side for the reconsideration of their case, hence the instant challenge is not an academic exercise, as future remedies of the petitioners, are dependent on the fate of this petition. Petitioners, have reiterated that they are not challenging the Notification, where under their services have been terminated by the Lahore High Court, as they are aware that writ is not maintainable against the High Court in the light of Asif Saeed v. Registrar, Lahore High Court and others (PLD 1999 Lahore 350) and Muhammad Iqbal and others v. Lahore High Court through Registrar and others (2010 SCMR 632). They submit that they will pursue the same administratively once the fate of section 10 (1)(i) of the Act is determined.

5. It is argued that the petitioners were appointed as Civil Judges-cum-Judicial Magistrates against substantive vacant posts, however, their appointment was subject to probation. They, therefore, do not have a vested right to be appointed to the post, but have the vested right to be appointed to the post, if they successfully complete the period of probation. They further argued that the petitioners were entitled to know the reasons behind the opinion formed against them during the period of probation and in case the opinion was adverse, they had the right to be put to notice, so that they could explain and defend themselves, before they be deprived of their confirmation to a substantive vacant post. It is submitted that there has been no adverse comment against the petitioners, as none has been communicated to them during the course of their service, therefore, they are doubly curious regarding the reasons for their termination. They are, therefore, aggrieved of section 10 (1) (i) of the Act, which provides that the services of civil servant may be terminated without notice, during the period of his probation.

6. It is emphasized that, as far as petitioner No.2 is concerned, Certification of Appreciation dated 18-11-2013 has been issued by the District and Sessions Judge, Sahiwal which states as follows:---

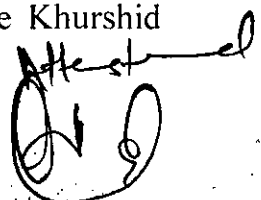
Affected
[Signature]

(47)

"I have the honour to submit that Miss Bushra Farid, learned Civil Judge was posted at Sahiwal on 17-7-2013. At present she is exclusively dealing with cases of family nature and performing upto the level of satisfaction without any complaint with regard to her integrity."

7. It is submitted that the petitioners served as Civil Judges-cum-Judicial Magistrates for a period of almost four years (extended period of probation) therefore their services could not be terminated without notice. They submitted that section 10(1)(i) of the Act deprives the petitioner of the right to notice, hearing and reasons and therefore offends Article 10A of the Constitution. Reliance is placed on Wattan Party through President v. Federation of Pakistan through Cabinet Committee of Privatization, Islamabad and others (PLD 2006 SC 697), Pakistan Peoples Party v. Government of Punjab and others (PLD 2014 Lahore 330), Muhammad Ashraf Tiwana and others v. Pakistan and others (2013 SCMR 1159), National Bank of Pakistan and 117 others v. SAF Textile Mills Ltd. and another (PLD 2014 SC 283), Messrs Chenone Stores Ltd. through Executive Director (Finance Accounts) v. Federal Board of Revenue through Chairman and 2 others (2012 PTD 1815), Bilal Akbar Bhatti v. Election Tribunal, Multan and 15 others (PLD 2015 Lahore 272), Al-Jehad Trust through Raeesul Mujahideen Habib-ul-Wahabb-ul-Khairi and others v. Federation of Pakistan and others (PLD 1996 SC 324), Imtiaz Ahmad Kaifi v. Government of Punjab and others (PLD 2013 Lahore 598), Engineer Majeed Ahmed Memon v. Liaquat University of Medical and Health Sciences Jamshoro and others (2014 SCMR 1236), State of M.P. v. Rakesh Kohli and another (2013 SCMR 34), Arshad Mehmood v. Commissioner/ Delimitation Authority, Gujranwala and others (PLD 2014 Lahore 221) and Babar Hussain Shah and another v. Mujeeb Ahmed Khan and another (2012 SCMR 1235).

8. Learned Additional Advocate General, Punjab along with Assistant Advocate General, Punjab, who are also on notice under Order XXVII-A of C.P.C., submit that Articles 4 and 10-A of the Constitution are not attracted to this case, as the petitioners, being probationers, do not have any right to be appointed to the post. In support of his contention learned Additional Advocate General placed reliance on Federation of Pakistan v. Riaz Ali Khan (PLD 1958 (W.P.) Lahore 22) and Muhammad Siddiq Javaid Chaudhry v. The Government of West Pakistan (PLD 1974 SC 393). He also submitted that the petitioners were fully aware at the time of their appointment regarding section 10 of the Act but they did not challenge the same at that time and have challenged the same after their termination, therefore, the petitioners are blowing hot and cold, which is not permitted under the law. Learned Law Officer placed reliance on Justice Khurshid

Attested


Anwar Bhinder and others v. Federation of Pakistan and others v. Federation of Pakistan and another (PLD 2010 SC 483) to submit that the petitioners have no vested right to a notice or hearing during the period of probation. He further placed reliance on Abdul Haque Indhar and others v. Province of Sindh through Secretary Forest, Fisheries and Livestock Department, Karachi and 3 others (2000 SCMR 907), Ch. Muhammad Hussain Naqshbandi v. Government of the Punjab and others (2003 PLC (C.S.) 1421) and Liaqat Ali Shahid, Ex-Civil Judge, Bhalwal v. Government of the Punjab through Chief Secretary, Punjab, Lahore (1999 PLC (C.S.) 334). Lastly, he submits that the petitioners have no locus standi to challenge their termination or the constitutionality of the law.

48

9. I have heard the parties at length, have gone through the record and examined the case-law cited by the parties. The opinion of the court is as follows:---

OPINION OF THE COURT

Facts

10. The petitioners were appointed as Civil Judges-Cum-Judicial Magistrates on 23-6-2010 subject to probation. During probation, they were posted against existing vacancies vide Notification dated 30-6-2010. Petitioners passed the Departmental Examination and successfully attended and qualified the Course and Training prescribed by the High Court during the initial few months of their service. Thereafter, the petitioners, served the District Judiciary for a period of four years and a day before the completion of the extended period of probation, the services of the petitioners were terminated, without notice and without disclosing the reasons for their termination, under section 10(1)(i) of the Act, vide Notification dated 4-7-2014.

11. The terms and conditions of a judicial officer, including appointment, probation, confirmation and termination are governed under the Punjab Civil Servants Act, 1974 ("Act"), read with the Punjab Judicial Service Rules, 1994 ("Judicial Rules") and where the Judicial Rules are deficient or lacking, by Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974 ("Rules").

12. Initial appointment of a civil servant to a substantive post is subject to probation under section 5 of the Act. Section 5 of the Act describes the scope and nature of the term probation in the following manner:---

Attest
A. I. Q.

49

"5. Probation: (1) An initial appointment to a service or post, referred to in section 4, not being an ad hoc, appointment, shall be on such probation and for such period of probation, as may be prescribed.

(2) Any appointment of a civil servant by promotion or transfer to a service or post may also be made on such probation and for such period of probation as may be prescribed.

(3) Where, in respect of any service or post, the satisfactory completion of probation includes the passing of a prescribed examination, test or course or successful completion of any training, a person appointed on probation to such service or post who, before the expiry of the original or extended period of his probation, has failed to pass such examination or test or to successfully complete the course or the training shall, except as may be prescribed otherwise---

(a) if he was appointed to such service or post by initial recruitment, be discharged; or

(b) if he was appointed to such service or post by promotion or transfer, be reverted to the service or post from which he was promoted or transferred and against which he holds a lien or, if there be no such service or post, be discharged." (emphasis supplied)

A probationer is "eligible" for confirmation in service on the satisfactory completion of his probation under section 6 of the Act which states as under:---

6. Confirmation.--

(1) A person appointed on probation shall, on satisfactory completion of his probation, be eligible for confirmation in a service or a post as may be prescribed.

(2) A civil servant promoted to a post 2(or grade) on probation shall, on satisfactory completion of his probation, be confirmed in such post as may be prescribed.

(3) A civil servant promoted to a post 2(or grade) on regular basis shall be confirmed after rendering satisfactory service for such period as may be prescribed.

(4) There shall be no confirmation against any temporary post.

Attest
[Signature]
[Stamp]
ROOCHING

(5) A civil servant who, during the period of his service, was eligible for confirmation in any service or against any post, retires from service before confirmation shall not, merely by reason of such retirement, be refused confirmation in such service or against such post or any benefits accruing there-from.

(6) Confirmation of a civil servant in a service or against a post shall take effect from the date of the occurrence of a permanent vacancy in such service or against such post or from the date of continuous officiation, in such service or against such post, whichever is later. (emphasis supplied)

Rule 7A of the Judicial Rules provides as under:---

"7A. Confirmation of Civil Judge-cum-Magistrate.--- A Civil Judge-cum-Magistrate shall not be confirmed in service unless:

(a) He completes initial or extended period of probation satisfactorily on the basis of performance evaluation made by Departmental Confirmation Committee;

(b) He undergoes, attends and successfully qualifies such course and training as may be determined by the High Court; and

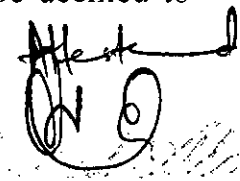
(c) He has passed the departmental examination under the Punjab Civil Judges Departmental Examination Rules, 1991."

Rule 8² of the Judicial Rules provides as under:---

"8. (1) A person appointed to a post in a grade against a substantive vacancy shall remain on probation for a period of two years, if appointed by initial recruitment, and for a period of one year, if appointed otherwise; provided that the appointing authority may extend the period of probation by a further period not exceeding two years in all.

Explanation--- Officiating service and service spent on deputation to a corresponding or a higher post may be allowed to count towards the period of probation.

(2) If no orders have been made by the day following the completion of the initial probationary period, the period of probation shall be deemed to have been extended.


SECRETARY
SUPREME COURT OF INDIA

SI

(3) A Civil Judge-cum-Magistrate or an Additional District and Sessions Judge appointed through initial recruitment, who has been confirmed under rule 7A or rule 7B, the confirmation shall take effect from the date of initial appointment in the service." (emphasis supplied)

The above shows that a judicial officer is appointed as a Civil Judge-cum-Judicial Magistrate against a substantive vacant post. The appointment is subject to confirmation after successful completion of the probation period. The confirmation requires that (i) the probationer completes the period of probation satisfactorily on the basis of the Performance Evaluation made by the Departmental Confirmation Committee. (ii) Qualifies such Course and Training as prescribed and (iii) passes the Departmental Examination. Under Rule 8, confirmation of a probationer takes effect from the date of initial appointment in service. Conditions prescribed in Rule 7A are in addition to the passing of a departmental examination and successful completion of training as envisaged under section 5 of the Act. Evaluation under Rule 7A (a) is free to place reliance on extraneous evidence procured from other sources (e.g. Police, Special Branch, etc.) to gauge the eligibility and fitness of the civil servant/judicial officer. The evidence collected can be adverse to the interest of the civil servant/judicial officer, which would ordinarily necessitate the dismissal or removal of the civil servant from service on the grounds of inefficiency, misconduct, corruption or being involved in any other subversive activity. Termination from service during probation on these grounds is punitive and penal in nature.

13. Section 10 (1) (i) of the Act provides as under:---

10. Termination of service.---

(1) The service of a civil servant may be terminated without notice---

(i) during the initial or extended period of his probation:

Provided that, where such civil servant is appointed by promotion on probation or, as the case may be, is transferred and promoted on probation from one service cadre or post to another service, cadre or post his service shall not be terminated so long as he holds a lien against his former post, service or cadre, and he shall be reverted to his former service, or as the case may be, cadre or post;

(ii) If the appointment is made on ad hoc basis liable to termination on the appointment of a person on the recommendation of the selection authority, on the appointment of such person.

SECRET

52

(2) In the event of a post being abolished or number of posts in a cadre or service being reduced the services of the most junior person in such cadre or service shall be terminated.

(3) Notwithstanding the provisions of subsection (1) but subject to the provisions of subsection (2), the service of a civil servant in temporary employment or appointed on ad hoc basis shall be liable to termination on thirty days notice or pay in lieu thereof.

Section 10(1)(i) states that if the services of a probationer are terminated during the period of probation he is not entitled to any notice. Section 5(6) of the Act employs the term "discharged" for a person who fails the departmental test or the training course. This is also echoed in Rule 4(3) of the Punjab Civil Servants (Efficiency and Discipline) Rules, 1999. The collective reading of sections 5 and 10 of the Act, envisage two distinct species of terminations. One where the probationer fails to pass the departmental examination or the training course prescribed by the authority. There is no allegation levelled against the probationer. The termination is, therefore, not punitive or penal. It simply results in the discharge of the probationer, which does not in any manner mar the future employment prospects of the probationer. Such like termination has come to be known as termination simpliciter.

14. The other specie of termination is where specific allegation is levelled against the officer on the basis of adverse information or evidence collected by the competent authority. Such a termination is akin to dismissal or removal from service and is punitive in nature. It also taints the service record of the probationer and impairs his future employment prospects.

15. A probationer under Rule 7A can fall in either of the two categories of terminations, but section 10(1)(i) does not make any such distinction and disallows the issuance of notice in both sets of terminations. This aspect, without reference to section 10(1)(i) of the Act, has earlier come up before the superior courts. The jurisprudence evolved over the years on the requirement of notice prior to terminating the services of the probationer is that the services of a probationer can be terminated without notice, in case of termination simpliciter but where there are allegations of misconduct or inefficiency levelled against the probationer, in such an eventuality, it is mandatory that the officer is put on notice. Reliance with advantage is placed on Muhammad Siddiq Javaid Chaudhry v. The Government of West Pakistan (PLD 1974 SC 393), Muhammad Amjad v. The Chief Engineer, WAPDA and another (1998 PSC 337), Ch. Muhammad Hussain

Attested
[Signature]

53

Naqshbandi v. Government of the Punjab and others (2004 SCMR 44), Muhammad Iqbal Khan Niazi v. Lahore High Court, Lahore through Registrar (2003 PLC (C.S.) 285) and Rehan Saeed Khan and others v. Federation of Pakistan and others (2001 PLC (C.S.) 1275).

16. The essence of our pre-18th constitutional amendment jurisprudence, to a large extent, can be captured and constitutionalized in the shape of the new fundamental right of fair trial under Article 10A of the Constitution. This has since been so judicially recognized. Reference can be made to Warid Telecom (Pvt.) Ltd. and 4 others v. Pakistan Telecommunication Authority through Chairman (2015 SCMR 338), Suo Motu action regarding allegation of business deal between Malik Riaz Hussain and Dr. Arsalan attempting to influence the judicial process (PLD 2012 SC 664), Babar Hussain Shah and another v. Mujeed Ahmed Khan and another (2012 SCMR 1235), Suo Motu Case No.4 of 2010 (PLD 2012 SC 553), Liaqat Ali Chughtai v. Federation of Pakistan through Secretary Railways and 6 others (PLD 2013 Lahore 413) and Shabbir Ahmed v. Kiran Khursheed and 8 others (2012 CLC 1236).

17. Article 10A provides as under:---

"10A. Right to fair trial.-- For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process." (emphasis supplied)

It is now a fundamental right that determination of civil rights and obligations of a person shall be through fair trial and due process. Civil rights³ are the rights guaranteed by the Constitution and the legislation. Obligations may refer to anything that a person is bound to do or forbear from doing, whether the duty is imposed by law, contract, promise, social relations, courtesy, kindness or morality.⁴ "Anything that an individual is required to do because of a promise, vow, oath, contract, or law. It refers to a legal or moral duty that an individual can be forced to perform or penalized for neglecting to perform."⁵ Right of one person is an obligation of the other and vice versa. This mutually corresponding and symbiotic relationship between civil rights and obligations, expands the proportions and broadens the amplitude of Article 10A and places it as one of the most robust, dynamic and an evergreen fundamental right that is not frozen in time or moored to serve, only the age old vested rights. Article 10A, is a constitutional right, hence it is open and all embracing and is there to include all kinds of rights and obligations that emerge from the Constitution, legislation, "law, contract, promise, social relations, courtesy, kindness or morality." Article 10A cannot be put in shackles and in fact

[Handwritten signature]
①

goes beyond vested rights. The words of Hamoodur Rehman, CJ in Fazal Din's case⁶ resonate so audibly even today: "It is clear from the above that the right considered sufficient for maintaining a proceeding of this nature [writ jurisdiction] is not necessarily a right in the strict juristic sense but it is enough if the applicant discloses that he had a personal interest in the performance of the legal duty which if not performed or performed in a manner not permitted by law would result in the loss of some personal benefit or advantage or the curtailment of a privilege or liberty of franchise." Article 10A, therefore, is all embracing and deals with rights and duties, which if violated can "result in loss of some personal benefit or advantage or curtail a privilege or liberty or franchise."

18. In the present case sections 4, 5 and 6 of the Act, confer a right to confirmation, once the judicial officer successfully completes his period of probation. It also confers an obligation on the authority to confirm the appointment of the officer if the probationer successfully completes the period of probation. Viewed differently, probationer is also under an obligation to meet the requirements of Rule 7A and has a corresponding right to confirmation subject to his fulfilling these obligations. A probationer, in effect, already stands appointed but has to undergo the process of confirmation. Therefore, the right of confirmation of a probationer or the obligation of the authority to confirm the probationer, if he successfully completes the period of probation, or vice versa, are covered under Article 10A and these rights and obligations have to be determined through a fair trial and due process. The objection of the learned Addl. A.G that the petitioners being probationers have no right to the post and, therefore, have no right to invoke Article 10A is hopelessly misplaced and is hereby rejected.

19. In this background the questions before this Court, in the context of section 10(1)(i) of the Act are: (i) Whether, in case where termination order is punitive in nature i.e., on the grounds of misconduct, corruption and inefficiency levelled against a judicial officer, section 10 (1) (i) of the Act by not allowing notice to be issued to the probationer before termination offends Article 10A of the Constitution? (ii) Whether Articles, 4, 9, 10A, 14 and 19A of the Constitution read with section 24A of the General Clauses Act, 1897 mandate, that termination order of a probationer, including termination simpliciter, must always disclose reason(s) or ground(s) for termination?

20. It is now well settled, that if there are allegations of inefficiency, misconduct or corruption, a probationer is required to be served with a notice. Rationale being that any termination in the nature of dismissal or

Affected

removal carries a stigma, hence the civil servant be granted an opportunity to defend and wash away any slur and taint alleged against him. Reference has already been made to the relevant case law above. One of the requirements for confirmation after the period of probation is given under Rule 7A(a) of the Judicial Rules, which reads as under:

55

(a) He completes initial or extended period of probation satisfactorily on the basis of performance evaluation made by Departmental Confirmation Committee;

Performance Evaluation is subjective and relies on sources other than the result of the Departmental Examination and the Course and Training scorecard. If the information or evidence collected is adverse to the interest of the judicial officer, natural justice and the strength of the settled jurisprudence (above) requires that the judicial officer be put on notice and be heard after an adequate disclosure of the adverse material and information is made to the judicial officer. This well established principle stands constitutionalized as a fundamental right under Article 10A. Fair trial and due process requires that adequate disclosure is made and the probationer is put on notice. Even otherwise, right to life which includes right to livelihood and right to dignity of a person under Article 14 of the Constitution also stand behind Article 10A. Section 10(1)(i), therefore, offends Article 10A of the Constitution in this respect. There are, however, other dimensions to section 10(1)(i) of the Act which need to be considered before finalizing this opinion.

21. The first dimension deals with situations covered under Rule 7A(b) and (c), which are as under:--

(a) He undergoes, attends and successfully qualifies such course and training as may be determined by the High Court; and

(b) He has passed the departmental examination under the Punjab Civil Judges Departmental Examination Rules, 1991.

This brings us to the concept of termination simpliciter as opposed to a termination carrying a stigma. Termination simpliciter means termination without any ceremony or termination in a summary manner.⁷ Such a termination from service is when a probationer fails to meet the eligibility requirements of the post set by the employer like a departmental examination or in service training or if the appointment is ad hoc and dependent on certain conditions or if the post itself is abolished. Such like termination is not punitive or penalizing in nature. More importantly, it does

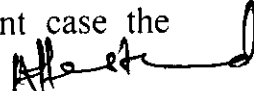
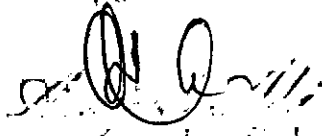
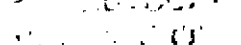
Attest
[Signature]

56

not cast any allegation or affect the professional reputation of the officer or the future prospects of employment of the probationer. It is for this reason that section 5 of the Act and Rule 4(3) of the Punjab Civil Servants (Efficiency and Discipline) Rules, 1999 refer to it as a "discharge" from service. The probationer therefore need not be put on notice if the termination is actually a discharge from service or is termination simpliciter. No useful purpose can be served by issuing any such notice as the authority has already granted the probationer an opportunity of appearing before the authority in the departmental examination and also in the course and training conducted by the authority. A parallel can be drawn with candidates applying for admission or employment, subject to an entrance test. In case the candidate fails to pass the entrance test, is he to be put on notice first? The answer is NO. Therefore, in such a case the competent authority is under no obligation to issue notice before termination of service. Section 10(1)(i) of the Act is applicable in such a case. It is important to note that the probationer under Article 10A is, however, free to challenge the legality of the termination order or the merits of the departmental examination or the transparency of the departmental training in a court of competent jurisdiction, if he so desires, on grounds other than the ground of failure to issue notice.

22. The next dimension of section 10(1)(i) of the Act is where there are allegations of misconduct or inefficiency against a judicial officer and the same have weighed on the mind of the authority but instead of leveling any allegations of misconduct and inefficiency against the probationer, the employer, in order to take advantage of section 10(1)(i) of the Act and to avoid the process of notice takes an easy course by opting for discharge of services or termination simpliciter. Can the benefit of section 10(1)(i) be availed in such like circumstances?

23. Where termination carries allegations of misconduct, inefficiency and corruption, the civil servant is entitled to a notice to defend himself and also to an adequate disclosure of the evidence against him. If the adverse information and material has weighed on the mind of the authority and has been the dominant reason behind the order of termination, withholding of any such allegation or avoiding to disclose any reason for termination, in order to bypass the requirement of notice by opting for termination simpliciter is offensive to Article 10A of the Constitution. Reliance is placed on Mrs. Abida Parveen Channar v. High Court of Sindh (2011 PLC (C.S.) 836). Termination simpliciter is an option available with the authority only when the termination, according to the service record of the civil servant, is not based on any allegations of misconduct, inefficiency or corruption against a civil servant. Interestingly, in the present case the

petitioners have passed the departmental examination and the successfully completed the training in the initial few months of their appointment. Therefore, there termination is purely on the basis of Rule 7A(a).

24. Every termination order must carry reasons. This is equally applicable to the case of termination simplieiter. There is no plausible explanation why a public authority must shy away from giving reasons for termination. To withhold reasons for termination of a civil servant generates a host of adverse assumptions against the character of a civil servant which has a bearing on his reputation and good will. The failure of disclosing or intentional withholding of reasons is, therefore, below the dignity of any white collared officer and offends Article 14 of the Constitution.

25. While section 10(1)(i) of the Act is unconstitutional in some situations, it is constitutionally permissible in others. In such a situation, the constitutionality of the said section can be saved, if section 10(1)(i) of the Act is read down, instead of being struck down.

26. The way ahead through this legislative impasse can either be to independently judge the constitutionality of section 10(1)(i) of the Act and strike it down as being unconstitutional or then try to save the provision by using purposive interpretation of the Act and using the interpretative tool of "reading down" or "recasting the statue." It is settled law that where literal construction or plain meaning causes hardship, futility, absurdity or uncertainty, the purposive or contextual construction is preferred to arrive at a more just, reasonable and sensible result. "Every law is designed to further the ends of justice and not to frustrate it on mere technicalities. Though the function of the courts is only to expound the law and not to legislate, nonetheless the legislature cannot be asked to sit to resolve the difficulties in the implementation of its intention and the spirit of the law. In such circumstances, it is the duty of the court to mould or creatively interpret the legislation by liberally interpreting the statute. The statutes must be interpreted to advance the cause of statute and not to defeat it". Justice Ajmal Mian, J in Elahi Cotton Mills Ltd. v. Federation of Pakistan (PLD 1997 SC 582) held:

"That theory of reading down is a rule of interpretation which is resorted to by the courts when they find a provision read literally seems to offend a fundamental right or falls outside the competence of the particular Legislature."

In Indus Jute Mills Ltd. v. Federation of Pakistan (2009 PTD 1473), Sh. Azmat Saeed, J. (as he then was) speaking for this Court held:

Attacked
D. Q.

"37. In view of the above, this court is confronted with two possible options; either is to strike down impugned section 235 Income Tax Ordinance, 2001 being ultra vires the Constitution and fundamental rights of the citizens or in the alternate, to resort to the time honoured rule of interpretation of employing the theory of reading down and looking beyond the literal meaning of the provision..."

27. If certain provision of law construed in one way would make them consistent with the constitution and another interpretation would render them unconstitutional the court would lean in favour of the former construction. Dr. Avtar Singh in Introduction to Interpretation of Statues (Reprint Edition 2007) writes:---

"Similarly, for upholding any provision, if it could be saved by reading it down, it should be done, unless plain words are so clear as to be in defiance of the Constitution. These interpretations spring out because of the concern of courts to always let a legislation to achieve its objective and not to let it fall merely because of a possible ingenious interpretation. The words are not static but dynamic. This infuses fertility in the field of interpretation. The principle of reading down, however, will not be available, where the plain and literal meaning from a bare reading of any impugned provisions clearly shows that it confers arbitrary, uncanalised or unbridled power."

28. In Maharao Saheb Shri Bhim Singhji and others v. Union of India and others (AIR 1981 SC 234) V.R. Krishna Iyer J held: "...reading down meanings of words with loose lexical amplitude is permissible as part of the judicial process. To sustain a law by interpretation is the rule... Courts can and must interpret words and read their meanings so that public good is promoted and power misuse is interdicted. As Lord Denning said: 'A judge should not be a servant of the words used. He should not be a mere mechanic in the power house of semantics'..." Reliance is also placed on Muhammad Umer Rathore v. Federation of Pakistan (PLD 2009 Lahore 268), Federal Steam Navigation Co. Ltd. and another v. Department of Trade and Industry (1974) 2 All E R 97, Delhi Transporate Corporation v. D.T.C. Mazdoor Congress and others (AIR 1991 SC 101), Sunil Batra v. Delhi Administration and others etc. (AIR 1978 SC 1675) and Jagdish Pandey v. The Chancellor, University of Bihar and others (AIR 1968 SC 353).

29. For the above reasons it is held as follows:---

[Handwritten signature]
[Handwritten initials]
[Faint stamp]

A. In the light of Article 10A read with Articles 4, 9, 14 and 25 of the Constitution, section 10(1)(i) of the Punjab Civil Servants Act, 1974 is read down, to the extent, that in cases where termination of a probationer is on the grounds of misconduct, inefficiency, corruption, etc prior notice is mandatory and is required to be issued to the probationer.

B. Where the probationer has failed to meet the eligibility requirements of a departmental examination or in service training course, the probationer can be terminated without notice, but any such termination order must carry reasons for termination.

C. In case the probationer has passed the eligibility criteria and has been found liable for misconduct, inefficiency or corruption, the competent authority does not have a choice to opt for termination simpliciter by withholding the real reason for termination and must issue a reasoned termination order.

D. It is clarified that this judgment does not examine or attend to the order of termination of services of the petitioners vide notification dated 4-7-2014 issued by the Lahore High Court, Lahore and the scope of this judgment is limited to the extent of vires of section 10 (1) (i) of the Act.

30. For the above reasons this petition along with connected petitions is allowed in the above terms. This judgment will decide the instant petition, as well as, connected writ petitions i.e., W.P. Nos.27171/2014 and 28557/2014 as all these petitions raise common questions of law and facts.

31. Before parting with the judgment I acknowledge the valuable assistance rendered by Junaid Jabbar, Advocate/learned amici curie and M/s. Qaisar Abbas and Mohsin Mumtaz, Research Associates/learned Civil Judges, Lahore High Court Research (LHCRC).

KMZ/N-
34/L
accepted.

Petitions

Altaf
Altaf
SUPREMACY OF LAW