KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.565/2022

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER(E)

Naveed Ahmad, Ex-Qari, Government Primary School, Chamba Gul, Hangu. .... (*Appellant*)

VERSUS

1. Secretary to Government of Khyber Pakhtunkhwa, Elementary and Secondary Education, Peshawar.
2. Decorator, Elementary and Secondary Education, Peshawar.
3. District Education Officer (M), Hangu.

.... (*Respondents*)

Mr. Noor Muhammad Khattak
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....15.04.2022
Date of Hearing.....29.01.2024
Date of Decision.....29.01.2024

JUDGMENT

Rashida Bano, Member (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

> **"On acceptance of this appeal, the impugned order of termination dated 23.11.2007 may very kindly be set aside and the appellant be reinstated into service with all back**

benefits. Any other remedy which this august Service Tribunal deems fit that may also be award in favor of the appellant."

2. Brief facts leading to filing of the instant appeal that appellant was appointed as Qari on contract basis in Education Department in the year 2004 and was performing his duty with zeal and zest. Services of the appellant was regularized in light of the Regularization Act 2005 vide order dated 15.02.2006 w.e.f 23.07.2005. During service appellant was falsely been implicated into a criminal case FIR No. 198 dated 22.04.2006 under section 302, 324, 337-L(i), 427, 148, 149 PPC police station City District Hangu and was later on arrested. That appellant after arrest faced the trial in the competent court of law and after completion of the criminal trial the appellant was acquitted from the charges leveled against him by Additional Session Judge-II, Hangu dated 15.10.2021. That appellant after acquittal approached respondent No.3 for resuming his duty but the appellant was informed that he has been terminated from service vide order dated 23.11.2007. Feeling aggrieved he filed departmental appeal which was rejected hence the present service appeal.

3. We have heard learned counsel for the appellants and learned District Attorney for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules and respondents violated Article 4, 25 and 38(e) of the Constitution of Islamic Republic of Pakistan. He further argued that the impugned orders were against law and facts, hence, not tenable and liable to be set aside. He submitted that the whole process had

been conducted in the absence of appellants and no inquiry was conducted by respondents who issued the impugned termination order. He further argued that no show cause notice, no statement of allegation, no charge sheet has been served upon the appellant. He submitted that the appellant was falsely implicated in criminal case and the competent authority should suspend the appellant till the conclusion of criminal case under CSR-194, but without waiting to the conclusion of criminal case, the appellant was terminated from service which is violation of CSR-194.

5. Conversely, Deputy District Attorney contended that appellant has been treated in accordance with law and rule. He further contended that appellant willfully absented himself from lawful duty without prior permission from competent authority, therefore, disciplinary proceedings were initiated against him and after fulfillment of all codal formalities, he was terminated from service vide order dated 23.11.2007. He further contended that departmental appeal of the appellant is barred by time, therefore, instant appeal might be dismissed.

6. Perusal of record reveals that appellant was serving in respondent department as Qari since 2004, when on 22.04.2006 he was involved in criminal case bearing FIR No.198 under section 302, 324, 337(1), 422, 148 and 149 Pakistan Penal Code Police Station City Hangu. Appellant was proceeded by the respondent when head master of the school sent notice of absence to the appellant on 08.05.2006 and reminder of it on 31.05.2007 and 16.06.2007. Headmaster in clear words mentioned that appellant is involved in criminal murder case and also advised appellant to pursue his criminal case and submit attendance report which means that respondents are in knowledge of registration of criminal case against the appellant then in such

a situation they will have to suspend appellant from service under CSR 194. Moreover notice of absence was also issued through publication in one newspaper, wherein two reasons were mentioned, one was absence and the other was involvement of appellant in criminal case bearing FIR No.198. Publication was issued in daily Taseer on 25.07.2007 wherein 15 days were given for report to the appellant but before completion of given period of 15 days, EDO vide order dated 31.07.2007, appointed inquiry committee consisting upon Muhammad Hussain, Chairman and Muhammad Quresh, Member. Inquiry committee submitted their report wherein two reasons were mentioned, one of absence and other was involvement of appellant in criminal case. No notice was even sent by the inquiry committee to the appellant and they relied upon notice sent by the Headmaster and publication issued in "Daily Taseer" newspaper, which was before order of inquiry, which means that appellant was condemned unheard by the inquiry committee who recommended major penalty without providing chance of hearing. Moreover, authority terminated the appellant from service without issuing any final showcause notice which is evident form impugned/order dated 23.11.2007.

7. It is a well settled legal proposition that regular inquiry is must before imposition of major penalty of dismissal from service, whereas in case of the appellant, no such inquiry was conducted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 has held that in case of imposing major penalty, the principles of natural justice require that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal

from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice. In absence of proper disciplinary proceedings, the appellant was condemned unheard, whereas the principle of *audi alterm partem* was always deemed to be imbedded in the statute and even if there was no such express provision, it would be deemed to be one of the parts of the statute, as no adverse action can be taken against a person without providing right of hearing to him. Reliance is placed on 2010 PLD SC 483. Perusal of impugned order dated 23.11.2007 reveals that service of the appellant were terminated but said penalty of termination was alien to Rs.2000 as major penalty had been prescribed as dismissal/removal from service and compulsory retirement beside reduction to lower post but there was no penalty known as termination in Rs.2000. Impugned order was not clear to the effect i.e. to under what provision of law EDO had restored to unknown penalty of termination from service. Relief is placed on 2011 PCC (CS) 1079 leveled against him in criminal case.

8. The appellant was acquitted from the charges vide judgment dated 15.10.2021. on the basis on which he was terminated from service. It has been held by the superior fora that all acquittals are certainly honorable. There can be no acquittal which may be said to be dishonorable. Conviction of the appellant in criminal case was the only ground on which he had been dismissed from service and the said ground had subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue his service.

9. It is established on record that charges of involvement of appellant in criminal case ultimately culminated in his honorable acquittal by the competent court of Law. In this respect we have sought guidance from 1988 PLC (CS) 179, 2003 SCMR 215 and PLD 2010 Supreme Court, 695.

Appellant after earning acquittal on 15.10.2021 filed departmental appeal on 12.11.2021 which was rejected vide order dated 16.03.2022 as per verdicts of apex court reported in PLD 2010 SC 695 before earning acquittal to file departmental appeal is futile attempt by an employee.

10. It is established on record that charges of involvement in criminal case ultimately culminated in honorable acquittal of the appellant by the competent court of Law. In this respect we have sought guidance from 1988 PLC (CS) 179, 2003 SCMR 215 and PLD 2010 Supreme Court, 695. Appellant after earning acquittal on 15.10.2021 filed departmental appeal on 12.11.2021 which was rejected vide order dated 16.03.2022 as per verdicts of apex court reported in PLD 2010 SC 695 before earning acquittal to file departmental appeal futile attempt by an employee which read as:

> *"S.4. Appeal Limitation - Civil servant sought reinstatement in service, after he was acquitted from murder case. Service Tribunal allowed the appeal filed by civil servant and reinstated him in service---Plea raised by employer/bank was that appeal was barred by limitation. Validity--- Civil servant was acquitted in criminal case on 22-9-1998 and he filed his departmental appeal on 12-10-1998, i.e. within three weeks of his acquittal in criminal case---It would have been a futile attempt on the part of civil servant to challenge his removal from service before earning acquittal in the relevant criminal case---It was unjust and oppressive to penalize civil servant for not filing his departmental appeal before earning his acquittal in criminal case which had formed the foundation for his removal from*

service---Appeal before Service Tribunal was not barred by limitation."

Therefore, appeal of the appellant is not barred by time.

11. It is established on record from judgment passed learned by ASJ dated 15.10.2021 that appellant surrendered before law on 26.06.2018 which means he was absconder till 26.06.2018. Therefore in our humble view appellant is not entitled for benefits of the period which he remained absconder..

12. As sequel to above discussed ~~above~~, we are unison to partially accept the appeal in hand by setting aside impugned orders dated 23.11.2007 and 16.03.2022, and reinstate the appellant into service by treating absence period as leave without pay. Cost shall follow the event. Consign.

13. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 29th day of January, 2024.*

(MUHAMMAD AKBAR KHAN)
Member (E)

(RASHIDA BANO)
Member (J)

*M.Khan

ORDER
29.01. 2024

1. Learned counsel for the appellant present. Mr. Mohammad Jan learned District Attorney for therespondents present.

2. Vide our detailed judgment of today placed on file, the appeal in hand is partially accepted by setting aside impugned orders dated 23.11.2007 and 16.03.2022, and reinstate the appellant into service by treating absence period as leave without pay. Cost shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 29th day of January, 2024.*

(MUHAMMAD AKBAR KHAN)
Member (E)

(RASHIDA BANO)
Member (J)

*M.Khan