

IN THE HIGH COURT OF SINDH AT KARACHI

Syed Rehan Hassan Rizvi

vs.

The District & Sessions Judge, Karachi West

For the Appellant : In person
For the Respondent : Mr. Muzahir Hussain
(In-charge Superintendent)
Date of hearing : 30.09.2020
Date of announcement : 30.09.2020

JUDGMENT

Agha Faisal, J. The appellant, being a dismissed staff member (ex-Reader in the Court of the learned Senior Civil Judge XVII Karachi West), has filed two appeals under Rule 10(1) of the Sindh Civil Servants (Efficiency & Discipline) Rules, 1973 (“Rules”). The first appeal assails an office order number A/W/2683/2017 dated 08.08.2013 (“Impugned Office Order”) whereby certain staff members were promoted, however, the list did not include the appellant. The second appeal was filed against the Order of the learned District & Sessions Judge, Karachi (West) dated 11th October, 2018 (“Impugned Dismissal Order”), whereby the appellant, in proceedings pursuant to an inquiry report dated 03.11.2017 issued by learned Additional District & Sessions Judge-IX, Karachi (West) (“Inquiry Report”), was sanctioned with the major penalty of dismissal from service. Since the two appeals are interconnected, hence, they shall be determined vide this common judgment. The appellant has already been dismissed from service, therefore, it is considered proper to deliberate upon his appeal against the Impugned Dismissal Order at the first instance as the conclusion therein would have a direct and consequential impact upon his appeal against the Impugned Office Order.

Appeal¹ against the Impugned Dismissal Order

2. It is considered appropriate to initiate this deliberation by reproducing the order under challenge:

“Whereas, in pursuance of inquiry report dated 03/11/2017 furnished by the learned Additional District & Sessions Judge-IX, Karachi West, a final Show Cause Notice bearing No.A/W/3069/2018, dated 05th July 2018 was served upon Syed Rehan Hassan Rizvi, Reader/Senior Clerk, presently posted in a Vacant Court of Learned Senior Civil Judge-XVII, Karachi West under the provisions of Sindh Civil Servants (Efficiency & Discipline) Rules, 1973; reply thereof was furnished by him.

¹ File No. HC/ADMI/02746.

And whereas, the undersigned after going through the facts, accorded an opportunity of personal hearing to the incumbent on 28/09/2018 and re-considered the matter along with personal file. The entire service record of incumbent is blemished and many times awarded penalties on the ground of corruption, therefore, in exercise of powers conferred as per Sindh Civil Servants (Efficiency & Discipline) Rules, 1973, I have come to the conclusion that the above named official is guilty of the charges, hence impose major penalty of "DISMISSAL FROM SERVICE" prescribed under Rule 4(1)(b)(iv) Sindh Civil Servants (Efficiency & Discipline) Rules, 1973 on Syed Rehan Hassan Rizvi, Reader/Senior Clerk.

Now, therefore, the penalty of "DISMISSAL FROM SERVICE" prescribed under Rule 4(1)(b)(iv) Sindh Civil Servants (Efficiency & Discipline) Rules, 1973, is hereby imposed on Syed Rehan Hassan Rizvi, Reader/Senior Clerk with immediate effect."

3. Briefly stated, the facts of the case² are that on 25.05.2015, the appellant, being Reader of the Court of learned Civil Judge & Judicial Magistrate-I, Karachi, put up six criminal cases before In-charge Judge for proceedings. In these cases the accused had pleaded guilty and had been sentenced to pay fine of Rs.1500/- each and in case of default thereof were ordered to undergo simple imprisonment for two days.

All the said cases were sent to Nazir Branch for payment of the fine, but instead depositing of Rs.1500/- each, only Rs.500/- was deposited by each accused. The Nazir Branch issued receipts of Rs.500/- in each case, however, the same were said to have been manipulated, by way of forgery, and made to appear as Rs.1500/-. The amount of Rs.500/- was initially written on the cover of each file and the record was allegedly doctored to reflect receipt of Rs.1,500, instead of the actual amount, so that it would appear that the actual amount of fine was deposited.

Upon taking notice of the matter an inquiry was ordered³, statements were recorded⁴, Inquiry Report rendered, and pursuant thereto the appellant was charged⁵ and required to submit a written defense. The reply⁶ to the charge sheet was submitted by the appellant. Post consideration of the aforementioned reply the appellant was issued with a show-cause notice⁷, in respect whereof a reply⁸ was filed by the appellant and in addition thereto an opportunity of a personal hearing was also afforded thereto on 28.09.2018. The aforementioned process culminated in the issuance of the Impugned Dismissal Order, hence, this appeal.

4. The appellant appeared in person and submitted that the Impugned Dismissal Order was contrary to the law. The grounds invoked in such regard were that the proceedings were based on an erroneous complaint; the proceedings were only initiated once the appellant filed an appeal against denial of promotion thereto; and that he was not permitted to cross examine the deponents⁹ before the inquiry

² Per Statement of Allegations dated 31.05.2018.

³ 09.11.2015.

⁴ Syed Arshad Ali, Qasim, Muhammad Aijaz, Zubair Ahmed and the appellant himself.

⁵ Charge, under Rule 6(1) of the Sindh Civil Servants (Efficiency & Discipline) Rules, 1973, dated 31.05.2018.

⁶ Dated 14.06.2018.

⁷ Show cause notice bearing No. A/W/3069/2018 dated 05.07.2018.

⁸ Dated 27.07.2018.

⁹ Syed Arshad Ali, Qasim, Muhammad Aijaz, Zubair Ahmed and the appellant himself.

officer. It was thus concluded that the Impugned Dismissal Order ought to be set aside.

5. Mr. Muzahir Hussain, In-charge Superintendent, appeared on behalf of the respondent and supported the Impugned Dismissal Order. It was submitted that complaints had been received in respect of the appellant and the same was also pointed out by the junior clerk and bailiff of the *Nazarat* branch; upon such information the record was called and an inquiry was ordered culminating in the Impugned Dismissal Order; and the appellant was given ample opportunity to present his case and / or cross examine the witnesses and the same is demonstrated from the fact that no demur was raised by the appellant with respect to the conduct of the inquiry proceedings till post rendering of the final order. It was sought to be demonstrated that the Impugned Dismissal Order had been rendered in consonance with the law and that no interference was merited therein in appeal.

6. The Appellate Authority¹⁰ has heard the respective submissions and considered the documentation to which its surveillance was solicited. The Impugned Dismissal Order has been rendered in disciplinary proceedings pursuant to the Rules, therefore, the scope hereof is ring-fenced to the determination¹¹ as to whether any interference is merited therewith in appeal.

7. The Rules prescribe a mechanism for amelioration of efficiency and / or disciplinary issues. There is provision for an inquiry¹², which may be dispensed with under prescribed circumstances¹³. The powers¹⁴ of an inquiry officer / inquiry committee and the procedure¹⁵ to be observed thereby is also stipulated in the Rules. The law prescribes the penalties¹⁶ that can be awarded thereunder as well as the grounds¹⁷ upon which the same may be predicated.

8. The record denotes the procedure that was adhered to, culminating in the Impugned Dismissal Order (as particularized supra), and no cavil has been articulated by the appellant with regard to the said procedure being in consonance with the law in general and the Rules in particular. It is, thus, observed that no case of procedural impropriety has been set forth by the appellant, hence, the only facet that awaits determination is whether the decision arrived at, finding the appellant culpable of corruption and imposing the major penalty of dismissal from service, warranted interference in appeal.

9. It is trite law¹⁸ that while the entire case was open to the appellate forum and there was no cavil to the reappraisal of the record, however, where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound

¹⁰ Constituted / assigned vide order of the Honorable Chief justice Sindh dated 15.09.2020.

¹¹ In *mutatis mutandis* application of Order XXXI Rule 41 CPC.

¹² Rule 5 of the Sindh Civil Servants (Efficiency & Discipline) Rules, 1973.

¹³ Rule 8 of the Sindh Civil Servants (Efficiency & Discipline) Rules, 1973.

¹⁴ Rule 7 of the Sindh Civil Servants (Efficiency & Discipline) Rules, 1973.

¹⁵ Rule 6 of the Sindh Civil Servants (Efficiency & Discipline) Rules, 1973.

¹⁶ Rule 4 of the Sindh Civil Servants (Efficiency & Discipline) Rules, 1973.

¹⁷ Rule 3 of the Sindh Civil Servants (Efficiency & Discipline) Rules, 1973.

¹⁸ Per *Faqir Muhammad Khokhar J.* in *Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as *PLD 2006 Supreme Court 1124*; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as *PLD 2013 Supreme Court 323*.

principles the appellate forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law.

10. The record demonstrates that the allegations against the appellant were subjected to the anvil of a detailed inquiry and repeated opportunities were provided to the appellant to dispel the charges there against. In addition to the successive written submissions of the appellant an opportunity of a personal hearing was also availed. Per the Impugned Dismissal Order, the preponderance of the incriminating record against the appellant could not be controverted by the appellant, hence, the Impugned Dismissal Order was constrained to be delivered.

It is imperative to record at this juncture that the appellant, post conclusion of the disciplinary proceedings, had written a letter¹⁹ to the respondent whereby it was sought that the punishment of compulsory retirement or leave prior to retirement may be imposed upon the appellant in consideration of humanitarian grounds. Notwithstanding the stand alone weightage of the record stacked against the appellant, the aforementioned letter *prima facie* demonstrates that the appellant did not deny culpability but merely sought a lighter punishment.

While eschewing a voluminous repetition²⁰ of the incriminating record, it would suffice to observe that the appellant has been unable to demonstrate that the decision, arrived at vide the Impugned Dismissal Order, could not have been predicated upon the record under consideration.

11. The honorable Supreme Court has recently maintained²¹ that a determination of culpability in respect of illegal gratification / corruption is a grave offence, requiring imposition of major penalty. It is considered appropriate to reproduce the illuminating observations of the august Court herein below:

“In our view, taking of illegal gratification itself is a heinous offence, requiring imposition of major penalty. The decision of Member-I of the Punjab Service Tribunal considering it a minor act and imposing a minor penalty through his impugned judgment shows that the said Member is neither sensitive nor alive to the offence of taking illegal gratification, which by law is considered serious misconduct. This Court has time and again held that accepting illegal gratification is a heinous offence and a civil servant, who is found guilty of this offence, cannot be retained in the civil service and major penalty has to be imposed on him. Reference in this regard may usefully be made to *Bashir Ahmad, Line Superintendent-I Lahore vs. Water and Power Development Authority, through its Chairman, Lahore* (1991 SCMR 2093), *Muhammad Inam vs. Federal Service Tribunal* (1995 SCMR 37), *Javed Akhtar vs. WAPDA through Chairman, WAPDA House, Lahore and 2 others* (1996 SCMR 867), *Ali Akbar vs. Inspector-General of Police* (2001 SCMR 83), *Safdar Ali vs. D.I.G. Traffic, Lahore and others* (2007 PLC (C.S.) 1284), *Ghulam Rasool Ranjha vs. Government of the Punjab through Chief Secretary, Province of Punjab, Lahore and others* (2008 SCMR 1265) and *Muhammad Shehzad Zaheer vs. Federation of Pakistan through Secretary Establishment Division and others* (2014 SCMR 1169).”

12. In summation it is observed that the principles of *audi alteram partem* appear to have been observed in the disciplinary proceedings under scrutiny; no cavil has been articulated by the appellant in so far as

¹⁹ Dated 11.10.2018.

²⁰ Per *Mansoor Ali Shah J.* in the yet unreported judgment dated 18.08.2020 in *Farooq Hussain vs. Shaikh Aftab Ahmed (CRP 104-L of 2019 & connected matters)*.

²¹ Per *Ijaz ul Ahsan J.* in the yet unreported judgment dated 30.07.2020 in *District Police Officer Mianwali & Another vs. Muhammad Hanif (Civil Appeal 324 of 2020)*.

the procedural aspect of the proceedings is concerned; no denial of the opportunity to cross examine is borne from the record and on the contrary the record is silent as to any demur from the appellant in such regard till the post final determination filing of the appeal; the appellant has admitted the occurrence of the misconduct / corrupt act under consideration but has merely, by bare assertion, initially denied culpability in regard thereof and subsequently sought a lighter punishment; the Impugned Dismissal Order appears to have concluded, based upon a preponderance of record, that the corrupt act did take place and the appellant was liable in respect thereof; and proceeded to impose the major penalty, of dismissal from service, upon concluding that the same was commensurate punishment considering the gravity of the offence concerned. It is in this context that it is observed that the appellant has been unable to demonstrate any infirmity with respect to the Impugned Dismissal Order, hence, the same is hereby maintained.

Appeal²² against the Impugned Office Order

13. By virtue of this appeal the appellant has called the order, whereby certain staff members were promoted, under scrutiny into question and sought his promotion with expected seniority²³ regardless thereof. The appellant argued that his promotion was not granted on account of dismal ACRs, which were unmerited in the first place.

14. In reply the minutes of the relevant DPC²⁴ were demonstrated to show that promotion was predicated upon seniority cum fitness and that two staff members, including the appellant, were denied promotion on account of the fitness standards. The minutes specifically made reference to the consistent adverse ACRs, record and reputation of the appellant. The para wise reply²⁵ to the petition was adverted to in order to demonstrate that the record supported the findings of the departmental promotion committee.

15. It is observed that the appellant has not been able to demonstrate any infirmity with respect to the Impugned Office Order and even otherwise the question of denial of promotion becomes irrelevant since he has already been dismissed from service and the Impugned Dismissal Order has been maintained supra.

16. In view of the rationale and reasoning herein contained, this appellate authority is of the considered view that the appellant has been unable to set forth a case meriting interference in the orders impugned, hence, these appeals are hereby dismissed.

Agha Faisal, J.
Appellate Authority

²² File No. HC/ADMI/02619.

²³ The persons who have been promoted vide the Impugned Office Order and whose status would be effected if the appeal were to be allowed have not been arrayed herein.

²⁴ Held on 08.08.2017.

²⁵ Presented on 10.01.2018.