

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C. J.
Raja Saeed Akram Khan, J.

Civil Appeal No.113 of 2016
(PLA filed on 01.03.2016)

1. Executive Engineer, Public Works Department (Highway Division) Bagh.
2. Sub-Divisional Officer, Public Works Department (Highway Sub-Division) Dhirkot, District Bagh.
3. District Accounts Officer, District Bagh.
4. Mate, Gang No.3, Ghaziabad, Minhasa Road, Tehsil Dhirkot, District Bagh.

....APPELLANTS

VERSUS

Zakeer Ahmed s/o Mir Zaman, r/o village Sassar, District Bagh (terminated Qulli Ganag No.3), Ghaziabad, Minhasa Road, Tehsil Dhirkot, District Bagh.

.... RESPONDENT

[On appeal from the judgment of the Service Tribunal dated 30.12.2015 in Service Appeal No.605 of 2015]

FOR THE APPELLANTS: Mr. Raza Ali Khan,
Advocate-General.

FOR THE RESPONDENT: Mr. Muhammad Dawood
Khan Abbasi, Advocate.

Date of hearing: 20.03.2017.

JUDGMENT:

Ch. Muhammad Ibrahim Zia, C.J.— The above titled appeal by leave of the Court arises out of the judgment of the Service Tribunal dated 30th December, 2015, whereby the appeal filed by the respondent, herein, has been accepted and the order of termination from service dated 09.06.2015 has been set aside.

2. The brief facts of the case are that the respondent herein, filed an appeal in the Service Tribunal, whereby he challenged the order dated 09.06.2015, through which his services were terminated. He alleged that his services have illegally been terminated through the impugned order without conducting an inquiry and providing an opportunity of hearing, hence the same is liable to be set aside being contrary to law. After necessary proceedings, the Service Tribunal through the impugned judgment dated 30th December, 2015, accepted the appeal and set aside the termination order dated 09.06.2015, hence this appeal by leave of the Court.

3. Mr. Raza Ali Khan, the learned Advocate-General while arguing on behalf of the appellants narrated the necessary facts and submitted that the impugned judgment of the Service Tribunal is violative of the statutory provisions as well as against the facts of the case. The respondent being habitual absentee, was removed from service according to law. Notices were issued to him time and again but he deliberately avoided the service of notice and did not bother to abide by the service rules or perform his duty. He was issued final notice but despite issuance of notice, instructions and directions by the departmental authority he, darely and deliberately failed to perform his duties. Consequently, a notice was published in the newspaper, but despite that he failed to join his duty, thus the authority was forced to pass the order of his removal from service. The appeal before the Service Tribunal was filed without any legal justification which has not been properly decided by the Service Tribunal. The propositions raised in the written statement have not properly been considered by the Service Tribunal, therefore, the impugned judgment is not maintainable. In this state of affairs no illegality has been committed by the authority. He further argued that if at all the Service Tribunal reached the

conclusion that no proper inquiry has been held then the Service Tribunal should have passed the order for initiating fresh inquiry and the authority shall be set at liberty to proceed further according to law, but without such unconditional order, the reinstatement of respondent's service amounts to protect the misconduct of civil servant and encouragement.

4. Conversely, Mr. Muhammad Dawood Khan Abbasi, Advocate, counsel for the respondent submitted that the departmental authority passed the order arbitrarily in violation of the statutory provisions of law through a short process within one month' time. He submitted that neither any notice was served upon the respondent nor any inquiry was conducted. According to the enforced law, it is duty of the authority to conduct proper inquiry while providing the accused, civil servant an opportunity of defence and cross-examining the witness if any appeared against him, but in the case in hand, without any inquiry and providing an opportunity of hearing the order of removal from service i.e. major penalty has been imposed which has rightly been set

aside by the Service Tribunal, therefore, no illegality is committed. The appeal has no substance.

5. We have heard the learned counsel for the parties and perused the record made available. The appellants' own produce record reveals that the first notice was issued to the respondent on 04.05.2015 and just within a short span of time, two other notices have been issued. The authority has not brought on record that any of the notices, was duly served upon the respondent. The proclamation published in "*Daily Kashmir Times Rawalpindi*" on 3rd June, 2015 has been brought on record, whereas the impugned departmental order for removal from service was passed on 9th June, 2015. Thus, it is apparently proved from the record that no proper inquiry has been conducted. In the written statement the departmental authority has taken the stand that the respondent has been removed from service after inquiry conducted by the Sub-Divisional Officer and on the recommendations of the Sub-Divisional Officer, the order has been passed, whereas no such inquiry report has been brought on record. Only a single line certificate, Exh. 'PE/1', issued by the Sub-Divisional Officer has been produced which only speaks that the

accused civil servant has not joined the duty. Thus, evidently neither proper inquiry has been held nor any statement has been recorded against the accused, therefore, the question of defence or cross-examination does not arise. In this state of affairs, the imposition of major penalty i.e. removal from service appears to be violative of law. The arguments that the inquiry has been held is also disproved from the impugned removal from service order which clearly speaks that no inquiry was held and only on the ground of hearsay evidence that the respondent has gone abroad, the major penalty of removal from service has been imposed. Thus, the Service Tribunal while setting aside such order has not committed any illegality.

6. So far the contention of the learned counsel for the appellants that the Service Tribunal has passed the unconditional order and barred the authority from initiating fresh inquiry, is concerned, it appears to be misconceived. The authority has not been barred from conducting proceedings according to law. However, if the authority so apprehends, it is clarified that if according to law the authority can prove any misconduct committed by the

respondent, it may proceed according to law after conducting the proper inquiry as required by law and can exercise its powers.

With the above stated reasons and observations, the appeal stands dismissed with no order as to costs.

CHIEF JUSTICE
Muzaffarabad.
.03.2017

JUDGE

Date of announcement: 27.03.2017
