SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

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

Civil Appeal No.116 of 2017
(PLA filed on 04.03.2017)

Shahbaz Akram (Ex) Stenographer Court of Civil Judge Dadyal r/o Paraye Tehsil Samahni, District Bhimber.

……APPELLANT

VERSUS

1. Competent Authority Hon'ble Chief Justice of the High Court of AJK through Registrar High Court, Muzaffarabad.
2. Registrar High Court of AJK Muzaffarabad.
3. Inquiry Officer, District and Sessions Judge, Bhimber.
4. Civil Judge Dadyal, District Mirpur.

…RESPONDENTS

[On appeal from the judgment of the Subordinate Judiciary Service Tribunal dated 09.01.2017 in Service Appeal No.13/2013]

FOR THE APPELLANT: Sheikh Masood Iqbal, Advocate.

FOR THE RESPONDENTS: Raja Saadat Ali Kiani, Additional Advocate-General.

Date of hearing: 27.10.2017**.**

JUDGMENT:

Ch. Muhammad Ibrahim Zia, C.J.– The titled appeal by leave of the Court has been filed against the judgment of the Subordinate Judiciary Service Tribunal *(hereinafter to be referred as Service Tribunal)* dated 09.01.2017, whereby, the appeal filed by appellant, herein, has been dismissed.

2. The facts of the case as stated are that the appellant was a permanent employee of the Azad Jammu & Kashmir Subordinate Judiciary and serving as a Stenographer. He had performed his duties in the Court of Civil Judge, Dudyal, for about eight years. On 17th May, 2013, a report of the Civil Judge Dudyal was submitted to the Registrar High Court that the appellant was found indulged in misappropriation of deposited amounts in pre-

emption suits and the decretal amounts. Thereafter, the Registrar High Court directed the Additional District and Sessions Judge Dudyal to inquire into the matter. In compliance of the said order, a show-cause notice was issued to the appellant and in response to the show-cause notice, the appellant deposited an amount of Rs.16,98,476/- in the bank account of the Court. In this regard the concerned *Nazir* also submitted his report to the Civil Judge Dudyal, along with bank receipts. Subsequently, the Additional District & Sessions Judge Dudyal, reported the matter to the Registrar, High Court regarding the amount deposited by the appellant on 24th May, 2013. After submission of the report, the District and Sessions Judge Bhimber was appointed as Inquiry Officer who recorded adverse findings against the appellant, hence, the competent authority, respondent No.1, while relying upon the aforesaid adverse findings, passed the order dated 29th August, 2013, whereby the appellant was awarded major punishment of dismissal from service. In pursuance of the aforesaid order, the

Registrar High Court issued order dated 31st August, 2013. The appellant challenged the said order by way of filing appeal before the Service Tribunal which was dismissed vide impugned judgment dated 09.01.2017, hence, this appeal by leave of the Court.

3. Sheikh Masood Iqbal, Advocate, the learned counsel for the appellant after narration of necessary facts submitted that the proceeding regarding the alleged misconduct has been conducted in this case under the provisions of the Azad Jammu and Kashmir Civil Servants Removal from Service (Special Powers) Act, 2001 *(hereinafter to be referred as Act, 2001)* whereas, according to law neither the proceedings under the provisions of said Act can be initiated against the employees of Courts nor the penalty can be imposed. In this regard he referred to the case reported as *Muhammad Yousaf Haroon vs. Azad Govt. & others* [2014 SCR 1180 and submitted that leaving aside all other aspects of the case, the proceedings conducted are against law and not

maintainable. He further submitted that the learned Tribunal has adopted double standard. In the case titled *Ansar Pervaiz vs. District and Sessions Judge* (Service Appeal No.14/2013 decided on 11.07.2014) it has been clearly held that the provisions of Act, 2001 are not applicable to the judicial employees, whereas, in the instant case this principle has been totally ignored. He further argued that on merit the respondents have failed to prove the misconduct attributed to the appellant. The appellant in good faith explained that he was not aware of the procedure nor it was his duty to maintain the accounts, however, this job was entrusted to him mere as an additional work and he has honestly deposited all the amount into the bank account of the Court. Neither there is any default nor misappropriation. He further submitted that the proceedings have been conducted in disregard of the statutory provisions. The appellant has neither been provided with an opportunity of cross-examination nor allowed to produce the defence

evidence, thus, the whole proceedings are violative of law and not sustainable.

4. Conversely, Raja Saadat Ali Kiani, Additional Advocate-General, the learned counsel for the respondents forcefully defended the impugned judgment and submitted that the misconduct on the part of the appellant is an admitted fact. The argument that the provisions of Act, 2001 are not applicable to be appellant, is misconceived. The principle enunciated by the apex Court relates to the employees of the High Court and not the subordinate Courts. The rules and the terms and conditions of service of employees of the High Court and that of sub-ordinate Courts are quite different and framed under different statutes. The terms and conditions of service of the appellant are not governed by the rules framed under section 47-A of the AJ&K Interim Constitution Act, 1974 rather the same are dealt with the rules framed under section 23 of the Azad Jammu and Kashmir Civil Servants Act, 1976. So far as the merits of the case are concerned, after clear confession by the

appellant even there was no necessity to record any evidence but despite this the proceedings have been conducted and evidence has been recorded. Even from the evidence it is proved beyond the shadow of doubt that the appellant has committed gross misconduct, dishonesty and misappropriated the public funds, thus, the impugned departmental order as well as the judgment is quite consistent with law calling for no interference.

5. We have considered the arguments of the learned counsel for the parties and examined the record made available. The argument, that the provisions of Act, 2001 are not applicable to the appellant is of vital importance. The appellant along with the memo of appeal has also annexed the copy of interim order recorded by the Service Tribunal on 13.02.2015 wherein the learned Service Tribunal has observed that the appellant is an employee of subordinate Judiciary and the Azad Jammu & Kashmir Judicial Department (Lower Courts Establishment) Rules, 1991 are applicable to him, thus, the application of Act, 2001 is not excluded

rather it is applicable to him. This order has not been challenged and attained the finality, however, leaving aside this aspect even otherwise on this proposition this Court has already laid down the principle of law in the case reported as *Muhammad Yousaf Haroon vs. Competent Authority and others* [2014 SCR 1180], wherein after detailed deliberation it has been held that:-

> "18. Same like for the employees of the High Court and the Supreme Court, under the provisions of section 47-A of Constitution Act, 1974, rules making powers have been delegated to the Supreme Court and the High Court subject to approval by the President. Presently, the special laws, i.e. Supreme Court Establishment (Appointment of Officers and Servants Terms & Conditions of Service) Rules, 1994 and AJ&K High Court Establishment (Appointment & Conditions of Service) Rules, 2011 are made under the Constitutional provisions of Section 47-A. Regarding these laws, Act, 2001 has not been given overriding effect thus, is not applicable to the employees of the Supreme Court and High Court."

It is clear that according to enunciated principle of law Act, 2001 is not applicable to the employees whose terms and conditions of service are governed by the rules framed under section

47-A of the AJ&K Interim Constitution Act, 1974. The terms and conditions of appellant's service are governed by the rules framed under Civil Servants Act, 1976 i.e. the Azad Jammu & Kashmir Judicial Department (Lower Courts Establishment) Rules, 1991. Under section 11 of the Act, 2001 it has been given overriding affect to the Civil Servants Act, 1976 and the rules made thereunder, thus, it is clear that Act, 2001 is applicable to the case of the appellant. The learned High Court has clearly observed that the terms and conditions of appellant's service are governed under the Civil Servants Act and Rules made thereunder, thus, the counsel for the respondent has rightly argued that the principle of law enunciated in the above referred judgment is not applicable to the case in hand.

6. According to the case history, the appellant during the intervening period of April 2008 to July 2012 received an amount of Rs.16,98,476/- on different dates but failed to deposit the same in the treasury. The said amount

remained in his personal use and after initiation of the inquiry he deposited the amount in the bank account of the Court. In his explanation submitted on 21.05.2015 he admitted the fact with the excuse that he was not aware of the rules, hence, he kept the amount in his custody without any misappropriation. As the commission of the alleged misconduct is confessed, hence, it legally require no further proof. Despite this the inquiry has been conducted, evidence recorded and the inquiry officer submitted the detailed report. It is established from the evidence that not only the amount has been kept in personal account by the appellant for years but even he did not bother to make the entries of this amount in the judicial record. Thus, even on merit the appellant has got no case.

7. Leaving aside all other evidence and aspects, the appellant himself has categorically stated that the total amount of Rs.16,98,476/- remained in his personal account and after initiation of the proceeding, he deposited the amount in the

treasury. In this context, his own submitted explanation is much relevant, which is reproduced as under:-

"بخدمت جناب ایڈیشنل ڈسٹرکٹ و سیشن جج صاحب ڈڈیال

عنوان: جواب نسبت وضاحت مالی بے ضابطگی۔

جنابِ عالی!

انتہائی ادب سے گزارش خدمت ہے کہ مظہر سے مالی بے ضابطگی کا دفتر سول جج ڈڈیال کی نسبت جواب طلب فرمایا گیا ہے۔ جناب والا مظہر عدات سول جج صاحب ڈڈیال میں بطور سٹینو گرافر سال 2006 سے تعینات ہے۔ مظہر کو اضافی طور پر سرشتہ دیوانی اپریل 2008 تا جولائی 2012 تک کام دیا گیا ہے۔ مظہر دیوانی امور کی واقفیت نہ رکھتا تھا۔ دوران تعیناتی دیوانی سرشتہ مظہر نے بذیل مقدمات میں رقوم وصول کیں۔

مرید حسین بنام کرامت حسین	رقم مبلغ-/320000زرخمس
ملک عبداللہ بنام عبدالرشید	رقم مبلغ-/660000ایضاً
محمد حسین بنام عبدالرشید	رقم مبلغ-/140000ایضاً
طالب حسین بنام غلام صغریٰ	رقم مبلغ-/140000ایضاً
عاشق حسین بنام نسرین اختر	رقم مبلغ-/438476زرڈگری

مقدمات متذکرہ بالا کی رقوم زرخمس وزرڈگری مظہر کے پاس جمع ہوتے رہے مگر مظہر کو اس نسبت علم نہ تھا کہ یہ رقوم تحت ضابطہ داخل خزانہ سرکار کروانی تھیں چونکہ مظہر مقدمات دیوانی کے بارہ میں اور رقم داخل کرانے کی نسبت علم نہ رکھتا تھا۔ اس لیے مظہر نے رقوم اپنے پاس محفوظ رکھی تھیں۔ مظہر کو اب علم ہوا کہ یہ رقوم تحت قواعد داخل خزانہ سرکار کروائی جانی تھیں۔

مظہر نے علم ہونے پر جملہ رقوم متذکرہ بالا تحت ضابطہ حوالہ ناظر کرتے ہوئے داخل بینک اکاؤنٹ عدالت کرادی ہیں۔ اس نسبت ثبوت بلف ہے۔

جناب والا مظہر نے جان بوجھ کر مالی بے ضابطگی نہ کی ہے بلکہ ناموز ہونے کے بناء پر مظہر سے غفلت ولاپرواہی ہوئی ہے کیونکہ مظہر بطور سٹینو گرافر عدالت سول جج صاحب ڈڈیال کا کام سرانجام دیتا تھا اور کام کی زیادتی کی وجہ سے دیوانی سرشتہ بھی اضافی طور پر مظہر کے حوالہ کیا گیا ہوا تھا۔

جناب والا مظہر اپنا کام انتہائی محنت اور دیانتداری سے سرانجام دے رہا ہے۔ مظہر غریب و سفید پوش گھرانہ سے تعلق رکھتا ہے۔ مظہر کے والد صاحب وجہ عارضہ فالج معذور ہیں

اور والدہ صاحبہ دل کی مریضہ ہیں۔ مظہر کے چھوٹے چھوٹے بہن بھائی ہیں جن کی کفالت کا واحد ذمہ دار مظہر ہے۔ مظہر کا ایک بھائی شادی شدہ ہے۔ وہ اپنے اہل عیال کے ساتھ الگ رہائش پذیر ہے۔ مظہر خورد برد اور مالی بے ضابطگی کی نسبت سوچ بھی نہیں سکتا۔

جناب والا سے استدعا ہے کہ مظہر کی غفلت و لاپرواہی کو معاف فرمایا جائے۔ مظہر نے کوئی رقوم خرد برد نہ کی ہے۔ مقدمات متذکرہ بالا میں جملہ رقوم تحت ضابطہ داخل ہو چکی ہیں۔ آئندہ کسی قسم کی کوئی غلطی کوتاہی نہ کرے گا۔ مظہر معافی کا خواستگار ہے۔ تحریر: 13-05-21

شہباز اکرم سٹینو گرافر

سول جج ڈڈیال"

According to the appellant's own contention the fact of keeping the mentioned amount in his personal account, stood proved.

8. The appellant in his explanation has taken the defense that he was not aware of the rules that such amount has to be deposited in the treasury and the same was kept in his personal account in good faith. The question arises whether such like excuse is acceptable or not. According to the unrebutted record, it appears that while performing his official duties except this amount he deposited all other amounts received by him in the treasury on different dates. He deposited in the treasury the amount received in the cases titled *Fida Hussain vs. Abdul Hameed and others* on 04.04.2009 and *Javed Iqbal vs. Zar Hussain and others* on 02.05.2009,

whereas, the disputed amount received by him during the same period was not deposited by him. Thus, the lame excuse that he was not aware of he rules stand rebutted from the record. Moreover, it is not the matter of days or months rather this amount remained in his personal account for almost four years' period. Keeping such a heavy amount in personal account and even not bothering to brought the same into notice of the presiding officer or take care and caution in this context, cannot be deemed to be an act done in good faith. According to law anything which has not been done with due care and attention cannot be deemed to be done in good faith as defined in different statues. Reference in this regard may be made to sub-section (7) of section 2 of Limitation Act, 1908 and section 52 of the Azad Kashmir Penal Code. Moreover, such like excuse cannot be accepted as a ground to exonerate the appellant from misconduct. Almost identical proposition has been resolved in the case reported as *Muhammad Ashraf Qureshi vs.*

Competent Authority & others [2012 PSC 668].

Paragraph 19 of the judgment reads as under:-

> "19. It is another sad aspect of the story that the appellant in his explanations has claimed innocence. For instance, while extending the explanation regarding allegation No.3-B, he has submitted:-
>
> 'مظہر نے مذکورہ نوٹیفیکیشن کو نہ دیکھا تھا اور نہ ہی پڑھا تھا بلکہ غلطی سے رولز کے تابع رہتے ہوئے برادر خود کی تقرری بطور جونیئر کلرک B-16 کر دی جس پر مظہر بڑا نادم اور شرمندہ ہے اور معذرت خواہ ہے۔'
>
> The same is the case regarding a reported case 2007 SCR 235, wherein the principle of law has been enunciated by this Court. The appellant explained:-
>
> 'یہ فیصلہ نہ تو مظہر کے علم میں تھا اور نہ ہی کسی فاضل وکیل صاحب نے پیش کیا۔"
>
> Whereas at the same time he has claimed to be expert of law:-
>
> 'مظہر کا قانون کے شعبہ سے تعلق عرصہ 13/12 سال سے ہے، نابلد نہ ہے۔ مظہر ثبوت کے طور پر کچھ contested فیصلہ جات و احکامات درمیانے شامل کرتا ہے جس سے جناب والا بھی اس نتیجے پر پہنچ سکتے ہیں کہ مظہر کتنا قانون سے نابلد ہے۔'
>
> The conduct of the appellant is not only contradictory but also not like a Judicial Officer. It is suffice to say that it is a universally accepted and celebrated principle that ignorance of law is no excuse. While all over the world a lay man cannot claim the excuse of ignorance of law how such excuse can be available to a Judicial Officer. The appellant has failed to point out any illegality in the impugned judgment of the Service Tribunal."

The principle enunciated in the above case is fully applicable to the case in hand due to

involvement of identical proposition, thus, legally the defence taken by appellant is not of worth consideration and stands repelled.

9. Before parting with the judgment, we also deem it necessary to observe in the public interest that although the appellant has been punished for misconduct but the concerned presiding officer has also not taken proper care and caution and even not bothered to have proper superintendence and control over the subordinate officials. At least the presiding officer should once a year make scrutiny of Court's record, specially, relating to accounts and judicial amounts. In this case, it appears that for quite long time of four years none of the presiding officers has bothered to properly perform functions of superintendence and control. All the presiding officers are expected and directed that they should at least go through the rules and regulations dealing with the accounts and duties of Drawing and Disbursement Officer (D.D.O) and strictly comply with the same so that such like eventualities may not arise which not only result

into misconduct by the officials but also seriously affect the dignity of the Court and system of administration of justice.

For the above stated reasons, the appellant has failed to make out any valid ground for interference in the impugned judgment, therefore, finding no force this appeal stands dismissed.

CHIEF JUSTICE JUDGE

Muzaffarabad,
.2017
Date of Announcement: 04-11-2017