

Stereo. H C J D A-38.
JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT

Writ Petition No.14605 of 2022

Muhammad Zahid Atta
Versus
Lahore Development Authority (“LDA”) through Director
General & others
J U D G M E N T

Date of hearing: 28.10.2024.
Petitioner by: M/s Imran Muhammad Sarwar and Rana Muhammad Ansar, Advocates.
Mr. Salman Riaz Chaudhry, Advocate (in connected petition i.e. **W.P. No.17464 of 2022**).
Respondents by: M/s Amir Wakeel Butt and Syed Hassan Ali Gillani, Advocates / Legal Advisors.

MUHAMMAD SAJID MEHMOOD SETHI, J.: This consolidated judgment shall dispose of instant writ petition along with connected writ petition i.e. **W.P. No.17464 of 2022** as common questions of law and facts are involved in these cases:

2. Through these petitions, petitioners have assailed vires of orders dated 31.01.2014 & 11.02.2022, passed by respondents No.3 & 2, respectively, whereby major penalty of “dismissal from service” was imposed upon the petitioners on account of gross misconduct and corruption and pursuant to order dated 14.10.2021, passed by this Court in previous round of litigation i.e. **W.P. No.10794 of 2020 & W.P. No.40551 of 2020**, petitioners’ appeals in this regard were rejected. Petitioners have also sought their reinstatement into service with all back benefits, however, since petitioner Muslim Gull (of connected petition) has reached the age of superannuation, therefore, he has also prayed for grant of pensionary benefits and monthly pension.

3. Learned counsel for petitioners submits that in previous round of litigation, petitioners’ constitutional petitions calling in question the orders for their dismissal from service were allowed vide order

dated 14.10.2021 with a direction to the Appellate Authority / respondent No.2 to decide the appeals afresh, however, appeals of petitioners have once again been dismissed without taking into account the contentions of the petitioners. He adds that the decision in any event is in violation of Section 13 of the Punjab Employees Efficiency, Discipline and Accountability Act (“**PEEDA Act**”), 2006 as the respondent-Appellate Authority had no authority to deviate from the recommendations made by the Inquiry Officer. He states that impugned appellate order being *ultra vires* the applicable law, is unsustainable.

4. Conversely, learned Legal Advisor for respondent-LDA defends the impugned orders.

5. Arguments heard. Available record perused.

6. Record indicates that major penalty of “dismissal from service” was imposed on petitioners due to allegations of their involvement in misplacement of file No.JT/AP/35, which was allegedly created to take illegal benefit and usurp valuable land belonging to LDA by one Mr. Muhammad Ashiq s/o Muhammad Ismail in connivance with the petitioners and other staff of LDA. As a result of inquiry proceedings, penalty of “stoppage of two increments for two years’ was initially recommended for petitioner Muslim Gull, however, the competent authority decided to initiate a *de novo* inquiry. Consequently, the Inquiry Officer recommended major penalty of forfeiture of 03-years of past service. The Competent Authority / respondent No.3 issued show cause notice to petitioner under Section 13(4) of the PEEDA Act, 2006 wherein it was specifically observed that the Competent Authority agreed with the findings of the Inquiry Officer and this notice did not reflect that the Competent Authority was intending to enhance the recommended punishment. Ultimately, vide order dated 31.01.2014, major penalty of “dismissal from service” was imposed by simply observing that a blatant attempt of fraud was made by the petitioners by preparing forged, fabricated & fictitious file to gain illegal benefit

and usurp the valuable land belonging to LDA, however, in the same order, it has also been acknowledged that the plots in question were cancelled and no financial loss had occurred to the authority. The relevant portion of aforesaid order is reproduced hereunder:-

“6.

The aforementioned facts make the involvement of both the accused evident in this scam and none of them can be absolved from the charges. Moreover, the reply of Mr. Zahid Atta signifies his malafide intentions and his stance is quite astonishing that the regular inquiry proceedings were never held. He has also submitted that he has not been given opportunity by the Inquiry Officer to submit his stance and defend himself, on the contrary, two regular inquiries are conducted in this matter and Mr. Zahid Atta was part of both inquiry proceedings and was crossed examined in detail so his objections are just frivolous and are reflective of his ulterior motives. Both the officials have a reputation of being corrupt and are found involved in many other cases of corruption. Although the plots were cancelled and no financial loss occurred to the authority but there is no doubt left that a blatant attempt of fraud was made by the accused officials by preparing forged, fabricated & fictitious file No.JT/AP/35 and its subsequent part files to take illegal benefit and usurp the precious land of LDA in shape of 15 valuable plots. Thus, the accused are guilty of gross misconduct and corruption. Such an act calls for imposition of harshest of penalties upon both of them.”

[emphasis supplied]

There is no cavil to the proposition that the competent authority is not bound by the recommendations of Inquiry Officer qua the award of penalty to the accused officer / official. However, if the competent authority intends to deviate from those recommendations, it must adhere to certain procedural safeguards. Firstly, the competent authority is required to give mandatory notice to the accused officer / official qua enhancement in punishment recommended by the Inquiry Officer affording him an opportunity to defend his position and to plead his case against enhancement of penalty; and secondly, the competent authority has to pass a reasoned order for disagreeing with the recommendations of the

Inquiry Officer demonstrating a conscious application of mind, but needful was not done in this case. Reference is made to Director Postal Life Insurance, Lahore v. Shakeel Ahmad (2021 SCMR 1162).

7. It transpires from the available record that the Competent Authority has in fact agreed with the recommendation and reiterated it in the show cause-cum-personal hearing notice dated 20.01.2014, relevant part whereof is reproduced hereunder:-

“3. **AND WHEREAS**, after perusal of the inquiry report and other relevant record, I have found no reason to differ with the findings of the Inquiry Officer. Hence, the charge of inefficiency, misconduct & corruption is proved against you for which you are liable to be imposed the penalty in terms of Section 4 of the Act *ibid.*”

Even there is no specific reference to the evidence or material, which urged respondent No.3 to award major penalty of “dismissal from service”. Thus, the said major penalty does not appear to be in conformity with law. Reference can be made to Shibli Farooqui v. Federation of Pakistan (2009 SCMR 281), Secretary, Government of Punjab and others v. Khalid Hussain Hamdani and 2 others (2013 SCMR 187), Asif Yousaf v. Secretary Revenue Division, CBR Islamabad and another (2014 SCMR 147) and Director Postal Life Insurance, Lahore v. Shakeel Ahmad (2021 SCMR 1162).

8. Needless to say that the imposition of punishment under the law is primarily the function and prerogative of the competent authority and the role of the Court is secondary, which comes into play only when the imposed penalty is found to be unlawful or unreasonable. Reasonableness for the purposes of assessing the quantum or nature of a penalty imposed by the department is to be gauged by applying the test of proportionality. In the case reported as Sabir Iqbal v. Cantonment Board, Peshawar through Executive Officer and others (PLD 2019 Supreme Court 189), it was held that proportionality is a standard that examines the relationship between the objective the executive branch wishes to

achieve, which has the potential of infringing upon a human right, and the means it has chosen in order to achieve that infringing objective. It was also observed that a more sophisticated version of proportionality provided for a structured test, whereby it will firstly be assessed whether the measure taken is suitable in attaining the identified ends (the test of suitability, which includes the notion of "rational connection" between the means and ends) and then whether the measure is necessary or if a less restrictive or onerous method could have been adopted (the test of necessity). In essence, an administrative decision must not be more drastic than necessary and therefore, it follows that the penalty imposed must be commensurate with the misconduct or inefficiency that has been proved. Reliance is placed upon Divisional Superintendent, Postal Services, D.G. Khan v. Nadeem Raza and another (2023 SCMR 803), Pervaiz Hussain Shah and others v. Secretary to Government of Punjab Food Department Lahore and another (2024 SCMR 309) and Postmaster General Balochistan v. Amanat Ali and others (2024 SCMR 1484).

9. In view of the above, these petitions are allowed in the manner that impugned orders dated 31.01.2014 & 11.02.2022 are declared to be illegal and without lawful authority. However, the Competent Authority may proceed afresh after issuance of fresh show cause notice for enhancement of punishment, thereby referring evidence ignored by the Inquiry Officer and providing reasons for disagreeing with the recommendations of the Inquiry Officer with conscious application of mind, keeping in view the dictum of law laid down in the case law, cited supra.

(Muhammad Sajid Mehmood Sethi)
Judge

APPROVED FOR REPORTING

Judge