2010 S C M R 861

[Supreme Court of Pakistan]

Present: Javed Iqbal and Muhammad Sair Ali, JJ

SECRETARY, LOCAL GOVERNMENT AND RURAL DEVELOPMENT, GOVERNMENT OF PUNJAB, LAHORE and another----Appellants

Versus

AHMAD YAR KHAN----Respondent

Civil Appeal No.2142 of 2006, decided on 2nd November, 2009.

(On appeal from the judgment, dated 8-5-2004 passed by Punjab Service Tribunal, Lahore in Appeal No.4 of 2004).

(a) Punjab Removal from Service (Special Powers) Ordinance (IV of 2000)---

----S. 3(1)(e)---Punjab Local Councils (Audit) Rules, 1981, R.27---Constitution of Pakistan (1973), Art.212(3)---Leave to appeal was granted by Supreme Court to consider; whether civil servant could be dealt with under Punjab Local Councils (Audit) Rules, 1981, simultaneously or subsequently to disciplinary proceedings taken under the provisions of Punjab Removal from Service (Special Powers) Ordinance, 2000; and whether penalty of recovery of Rs.371,836 was justifiable in the facts and circumstances of the case.

(b) Constitution of Pakistan (1973)---

----Art. 13---Criminal Procedure Code (V of 1898), S.403---Double jeopardy, principle of---Scope---No person can be punished twice for the same offence.

(c) Service Tribunals Act (LXX of 1973)---

----S. 4---Constitution of Pakistan (1973), Art.212(3)---Delay, condonation of---Effect---Sufficiency of cause for condonation of delay being question of fact is within exclusive jurisdictional/domain of Service Tribunal---Once discretion of condoning of delay has been exercised by Service Tribunal, it can neither be interfered with nor disturbed by Supreme Court.

Ali Hassan Rizvi v. Islamic Republic of Pak. 1986 SCMR 1086; Muhammad Azhaar Khan v. Service Tribunal, Islamabad 1976 SCMR 262; Yousaf Khan Siddiqi v. Additional Settlement and Rehabilitation Commissioner, Peshawar 1976 SCMR 268; WAPDA v. Abdul Rashid Dar 1990 SCMR 1513; Sher Bahadur v. Government of N.-W.F.P. 1990 SCMR 1519 and Zahida v. Deputy Director 1990 SCMR 1504 rel.

(d) Civil service---

----Departmental and criminal proceedings---Scope---Simultaneous action under disciplinary rules and criminal law can be initiated, subject to certain legal exceptions.

(e) Punjab Removal from Service (Special Powers) Ordinance (IV of 2000)---

----Ss. 3(1)(e) & 11---Punjab Local Councils (Audit) Rules, 1981, R.27---Constitution of Pakistan (1973), Arts.13 & 212---Double jeopardy, principle of---Applicability---Civil servant was awarded penalty of censure under S.3 (1)(e) of Punjab Removal from Service (Special Powers) Ordinance, 2000, by competent authority---Penalty of censure was not challenged by civil servant but authorities later on imposed recovery of Rs.371,836 against him under R.27 of Punjab Local Councils (Audit) Rules, 1981---Validity---Action against civil servant had already been finalized and penalty imposed under Punjab Removal from Service (Special Powers) Ordinance, 2000, had already attained finality---Recovery could have been made by competent authority but only minor penalty was imposed probably for the reason that civil servant had been exonerated by inquiry officer regarding alleged loss suffered due to Octroi contract allegedly executed by the civil servant---Supreme Court declined to interfere in the judgment passed by Service Tribunal as it had rightly set aside the order passed by the authorities---Appeal was dismissed.

Dr. Mohy-ud-Din Qazi, Advocate Supreme Court for Appellants.

Hafiz Tariq Naseem, Advocate Supreme Court for Respondent.

Date of hearing: 2nd November, 2009.

JUDGMENT

JAVED IQBAL, J.--- This appeal with leave of the Court is directed against judgment dated 8-5-2004 passed by the Punjab Service Tribunal, Lahore whereby the appeal preferred on behalf of respondent has been accepted.

2. Leave to appeal was granted by means of order dated 14-1-2009 in the following terms:---

> (i) Whether the respondent could be dealt with under the Punjab Local Councils (Audit) Rules, 1981 simultaneously or subsequently to the disciplinary proceedings taken under the provisions of Punjab Removal from Service (Special Powers) Ordinance, 2000; and
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> (ii) Whether the penalty of recovery of Rs.3,71,836 was justifiable in the facts and circumstances of the case."

3. Precisely stated the facts of the case as enumerated in the judgment impugned are to the effect that "a complaint was made by Muhammad Azad Sultan, Member Khidmat Committee Sub Division, Khanpur bringing to lime light the alleged irregularities committed by the staff of Chungi in Khanpur Town. It was stated that the local MPA Halqa PP 234 after accepting bribe in the sum of Rs.200,000 brought under his influence the staff to lease out the Chungi for Rs.25,00,000 out of which 17 lacs were deposited and the remaining amount was gobbled by the staff in connivance with the MPA. On the basis of the said complaint, it seems that the proceedings under the Punjab Removal from Service (Special Powers) Ordinance, 2000 were initiated against the appellant who was the Administrator Town Committee at the relevant time and the charge-sheet issued to him contained the following charges: ---

> "Now, therefore, you Mr. Ahmad Yar Khan, formerly EAC/Administrator, Town Committee, Zahirpir now EAC, Haroonabad hereby charge-sheeted as under:
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> (i) That as per Auction of Octroi contract for the year, 1998-1999 of Town Committee, Zahirpir auctioned to the extent of Rs.25,00,000 but you awarded/managed to award the said contract to the Contractor for amounting to Rs.17,00,000 due to this the Town Committee, Zahirpir sustained a loss of Rs.8,00,000.
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> (ii) That you failed to produce the relevant record of Contract of Octroi for the year, 1998-1999 while enquiring the matter by the Assistant Commissioner, Khanpur."

The respondent denied the charges, however, as a result of disciplinary proceedings initiated against him under the Punjab Removal from Service (Special Powers) Ordinance, 2000, minor penalty of censure was awarded by the Competent Authority under section 3(1) (e) of the Punjab Removal from Service (Special Powers) Ordinance, 2000 read with the Punjab Removal from Service (Special Powers) (Amendment) Ordinance, 2001. The penalty of censure was not challenged by the respondent. Pursuant to the inquiry report dated 6-6-2001 of the Divisional Director Local Fund Audit held under Rule 27 of the Punjab Local Councils (Audit) Rules, 1981, the respondent was held responsible for the loss occurred to the Town Committee Zahirpir and a penalty of Rs.3,71,836 was imposed upon the respondent as well as to the Chief Officer due to their negligence with the direction to make the payment within 30 days otherwise the amount was to be recovered as arrears of land revenue.

4. Dr. Mohy-ud-Din Qazi, learned Advocate Supreme Court entered appearance on behalf of the Secretary Local Government (petitioner) and contended that the appeal filed by the respondent being barred by time should not have been entertained by the Punjab Service Tribunal. It is argued that without assigning any reason the appeal has been accepted without adverting to the point of limitation causing serious prejudice against the petitioner. It is next contended that the provisions as enumerated in Article 13 of the Constitution of Islamic Republic of Pakistan, 1973, section 403, Cr.P.C. and section 11, C.P.C. have been misinterpreted and misconstrued as the above provisions

of law could not have been made applicable in the case which was initiated and finalized under the Punjab Removal from Service (Special Powers) Ordinance, 2000. It is also contended that no bar whatsoever has been imposed for initiation of criminal proceedings simultaneously besides the disciplinary proceedings under the relevant law which distinction could not be appreciated by the learned Service Tribunal. It is next contended that the surcharge amount was determined by the Competent Authority as envisaged under section 135 of the Punjab Local Government Ordinance, 1979 read with Rule 27 of the Punjab Local Councils (Audit) Rules, 1981 duly saved under section 196(2) of the Punjab Local Government Ordinance, 2001. It is also contended that no relief could have been given to the respondent as the judgment impugned is not sustainable on the touchstone of justice, equity and public interest.

5. Hafiz Tariq Naseem, learned Advocate Supreme Court appeared on behalf of respondent and controverted the view point vehemently as canvassed at bar by Dr. Mohy-ud-Din, learned Advocate Supreme Court for the petitioner with the submission that the judgment impugned being ' well based does not warrant interference and besides that no question of law of public importance is involved in the matter. It is next contended that the penalty imposed on the respondent amounts to double jeopardy as no action could have been taken against the respondent under section 135 of the Punjab Local Government Ordinance, 1979 read with Rule 27 of the Punjab Local Councils (Audit) Rules, 1981 irrespective of the fact whether it has been saved under section 196(2) of the Punjab Local Government Ordinance, 2001 or otherwise. It is further argued that the imposition of penalty is not in consonance with the provisions as enumerated in Article 13 of the Constitution of Islamic Republic of Pakistan, 1973, section 403, Cr.P.C. and section 11, C.P.C. after the initiation of action under the Punjab Removal from Service (Special Powers) Ordinance, 2000 and imposition of minor penalty. According to Hafiz Tariq Naseem, learned Advocate Supreme Court it was a past and closed transaction which cannot be re-opened by the Divisional Director Local Fund Audit in view of the bar as provided under section 11 of the Punjab Removal from Service (Special Powers) Ordinance, 2000.

6. We have carefully examined the respective contentions as agitated on behalf of the parties, scanned the entire record with the eminent assistance of learned counsel and perused the judgment impugned vigilantly. The pivotal question which needs determination would be that the respondent having already been punished as a result of disciplinary proceedings initiated against him under the Punjab Removal from Service (Special Powers) Ordinance, 2000 by the competent authority by means of order dated 26-1-2002 can be punished again by any other authority for the same charge but under a different law? The answer would be in negative. It is well-entrenched legal proposition rather a principle of universal application envisaged in the provisions enumerated in Article 13 of the Constitution of the Islamic Republic of Pakistan, section 403, Cr.P.C., section 11, C.P.C. and in the ancient maxim `nemo debet bis vexari pro eadem causa' (no person should be twice disturbed for the same cause) and the common law principle of the well known pleas of `autre fois acquit' (formerly acquitted) and `autre fois convict' (formerly convicted), which mean that no one shall be punished or put in peril twice for the same matter. Essa Noori v. Deputy Commissioner PLD 1979 Quetta 188, Ramkrishna v. State 1956 Cri. L Jour 1073, Purnananda Das Gupta v. Emperor AIR 1939 Cal.65, Yeok Kuk v. Emperor AIR 1928

Rang.252, Saifuddin E. Contractor v. State 1979 PCr.LJ 258, Sunderial Bhagaji v. State AIR 1954 Madh B 129, Srinivasulu v. P.V. Subbamma 1959 Cr.L. Jour 1137, T. Nangarappa v. Ranganatha Rao AIR 1953 Mys..64. It is well-established by now that no person can be punished twice for the same offence. As mentioned hereinabove that as a result of disciplinary proceedings minor penalty of censure was imposed under section 3(1) (e) of the Punjab Removal from Service (Special Powers) Ordinance, 2000 and the Punjab Removal from Service (Special Powers) (Amendment) Ordinance, 2001 upon the respondent by means of order dated 26-1-2002 and the amount in question could have been recovered by imposing penalty under the relevant provisions of the Punjab Removal from Service (Special Powers) Ordinance, 2000 which was not done for the reasons best known to the Competent Authority. In our view, it would be too late in the day to initiate fresh action under the garb of "surcharge" or any other provision of the Punjab Local Councils (Audit) Rules, 1981. It may not be out of place to mention here that when action was initiated under the provisions as enumerated under Rule 27 of the Punjab Local Councils (Audit) Rules, 1981 and inquiry was got conducted through Inquiry Officer, the respondent was exonerated from all the charges as a result of inquiry but the Appellate Authority did not agree without assigning any reasons which aspect of the matter requires consideration. The Appellate Authority can differ with the report of the Inquiry Officer but it is mandatory that some reasoning must be given for not concurring with the inquiry report. We are of the considered opinion that any proceeding other than those mentioned in section 11 of the Punjab Removal from Service (Special Powers) Ordinance, 2000 cannot be initiated. The learned Service Tribunal has dilated upon the said issue in the comprehensive manner in the judgment impugned which is reproduced hereinbelow for ready reference:-

> "7. The last point urged by the learned counsel for the appellant has also lot of weight. Section 11 of the Punjab Removal from Service (Special Powers) Ordinance, 2000 reads as under:--
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> "The provisions of this Ordinance shall have effect notwithstanding anything to the contrary contained in the Punjab Civil Servants Act, 1974 (VIII of 1974) and the rules made thereunder and any other law for time being in force."
> "The provision of law slams absolute bar and amounts to a non obstante clause rendering subservient, anything, contained in the Act, if it is in direct conflict to the provisions of the Ordinance. Section 3 of the Ordinance read with section 11 makes it more than clear that every act of misconduct or inefficiency by a civil servant shall be dealt with under the provisions of the Ordinance and if after inquiry, which may be dispensed with in certain cases by giving reasons, a civil servant who is found guilty shall be punished with a major or minor penalty. Any other law including the Act and the rules made thereunder if it endeavours to assume to itself the powers to punish a civil servant for misconduct or inefficiency it shall forthwith be rendered nugatory by the provisions of section 11 of the Ordinance enabling the provisions of section 3 ibid to enjoy superiority. As observed in the preceding paragraphs of this judgment the show-cause notice issued in this appeal contains allegations of misconduct and inefficiency. These allegations could only be probed and dealt with under the provisions of the Ordinance by virtue of section 11 of the Ordinance for the reason that section 3 of the Ordinance also deals with the

penalties to be imposed on a civil servant in case of misconduct and inefficiency. A manifest conflict appears on the surface between the provisions of the Ordinance and the show-cause notice and by virtue of section 11 of the Ordinance, at the cost of repetition, the provisions of the Ordinance relating to removal from service of a civil servant as embodied in section 3 of the Ordinance shall override the provisions of section 12(i) of the Act."

7. We have also dilated upon the question of limitation. It is well-settled by now that sufficiency of cause for condonation of delay being question of fact is within the exclusive jurisdictional domain of learned Service Tribunal and once a discretion condoning the delay has been exercised by the learned Service Tribunal, it can neither be interfered with nor disturbed by this Court. In this regard we are fortified by the dictum laid down in cases titled Ali Hassan Rizvi v. Islamic Republic of Pak. 1986 SCMR 1086, Muhammad Azhaar Khan v. Service Tribunal, Islamabad 1976 SCMR 262, Yousaf Khan Siddiqi v. Additional Settlement and Rehabilitation Commissioner, Peshawar 1976 SCMR 268, WAPDA v. Abdul Rashid Dar 1990 SCMR 1513, Sher Bahadur v. Government of N.-W.F.P. 1990 SCMR 1519, Zahida v. Deputy Director 1990 SCMR 1504.

8. We are conscious of the fact the simultaneous action under the Disciplinary Rules and Criminal Law can by initiated subject to certain legal exceptions but in view of the peculiar circumstances of the case simultaneous action cannot be initiated against the respondent as pressed time and again by the learned Advocate Supreme Court on behalf of petitioner for the reason that action against the respondent has already been finalized and penalty imposed under the Punjab Removal from Service (Special Powers) Ordinance, 2000 has attained finality. The recovery could have been made by the Competent Authority i.e. Chief Secretary but only minor penalty was imposed probably for the reason that the respondent has been exonerated by the Inquiry Officer qua the alleged loss suffered due to Octroi Contract for the year, 1998-1999 of Town Committee, Zahirpir allegedly executed by the respondent.

9. In view of what has been discussed hereinabove, the judgment impugned being well based does not warrant interference. The appeal being devoid of merit is dismissed.

M.H./S-7/SC Appeal dismissed.

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